

*United States Court of Appeals
for the Second Circuit*



**APPELLANT'S
APPENDIX**

76-7376

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

NO. 76-7376



BLANCHE MITCHELL,

Appellant.

vs.

NATIONAL BROADCASTING COMPANY and
S. THEODORE NYGREEN, Manager of Information
Services, National Broadcasting Company,

Appellees.

On Appeal From The United States District Court For The
Southern District of New York

APPENDIX TO BRIEF FOR APPELLANT

JACK GREENBERG
O. PETER SHERWOOD
RONALD L. ELLIS
10 Columbus Circle
Suite 2030
New York, New York 10019

ATTORNEYS FOR APPELLANT

PAGINATION AS IN ORIGINAL COPY

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JUDGE METZNER

75 Civ. 5892

BLANCHE MITCHELL,

Plaintiff,

-v-

NATIONAL BROADCASTING COMPANY,
and S. THEODORE NYGREEN, Manager
of Information Services, National
Broadcasting Company,

Defendants.

COMPLAINT

Index No. 75 Civ. _____

PLAINTIFF, by her attorneys COLES and WEINER, respectfully alleges:

1. This plaintiff is a Black female of African descent and color, a citizen of the United States and a resident of the State of New York, City of New York and County of New York.
2. That jurisdiction of this Court is invoked under Title 42, U.S.C. Sec. 1981 (Act of April 20, 1871, Chapter 22, Section 1, 17 Stat 11).
3. That jurisdiction of this Court is further invoked under Title 28 U.S.C. Section 1331 in that the amount in controversy exceeds \$10,000.00, exclusive of costs and interest.
4. Plaintiff was hired by defendant NATIONAL BROADCASTING COMPANY on March 13, 1972 as Operations Administrator of the Central Records Department.
5. At the time of plaintiff's hiring she was told that she was specifically being hired to become the Supervisor of Central Records upon the prospective retirement of the then Supervisor, Ms. Ruth Preston, who was due to retire in two years.

- | -

.1a

6. Throughout plaintiff's term of employment by defendant NATIONAL BROADCASTING COMPANY, plaintiff was not given the same terms and conditions of employment as were given to others, notably White females.

7. On or about the 1st of September, 1972 plaintiff requested tuition to attend a class on The Job of a New Supervisor, given at New York University.

8. Despite the fact that it is the policy of defendant National Broadcasting Company to pay tuition for job related courses, plaintiff's request was disapproved.

9. This disapproval was made, in whole or in part, by plaintiff's superior, the defendant Nygreen.

10. On or about the 27th of February, 1973, plaintiff requested a salary review and upgrading. Upon information and belief, a salary increase had been obtained for other professional personnel who were White; plaintiff did not receive a salary increase as scheduled.

11. On or about 2 March 1973, at a conference with the defendant Nygreen, plaintiff was informed that her salary letters to the salary administrator had been confiscated, and that they would not be returned to her.

12. The reason given by the defendant Nygreen was that plaintiff had no right to send the letters.

13. At all times pertinent to this complaint the defendant Nygreen was plaintiff's supervisor, and the Manager of Information Services of defendant NATIONAL BROADCASTING COMPANY.

14. At all times pertinent to this complaint the defendant National Broadcasting Company was a company subject to 42 U.S.C. Sec. 1981, with offices in the City of New York, County of New York and State of New York, in the Southern District.

15. Plaintiff was authorized to send such communication to Personnel, directly, by Ch. X-5 of the Personnel Policies of defendant National Broadcasting Company.

16. Defendants granted plaintiff a 5.9% merit increase effective March 25, 1973.

17. There is nothing in plaintiff's work record prior to the defendant Nygreen becoming Manager of Information Services which would support any allegations that plaintiff was not performing her job according to company standards.

18. No written systems or procedures existed in Central Records at the time plaintiff was hired and during her period of employment.

18. Upon information and belief, the real reason for the firing of plaintiff, was the rebuff of defendant Nygreen's personal advances to plaintiff, as set forth below.

19. Around the first week of May, 1972, about a month after the defendant Nygreen had met plaintiff, he asked her if she were lonely. She replied, "no." When he pursued the question she perfunctorily gave him an explanation of why she wasn't lonely, and attempted to steer the conversation back on a business topic.

20. Toward the end of July, 1973, at a time when the department was attempting to start a microfilm program, and was undergoing reorganization, defendant Nygreen called plaintiff into his office. During the midst of a business discussion, he suddenly announced to plaintiff that he was going to get an apartment in the city, and that he had access to his friend's apartment at that current time. Such information was not part of the discussion then at hand between plaintiff and defendant Nygreen.

21. Plaintiff politely told defendant Nygreen that it should be a nice arrangement for him, and made another perfunctory comment, and then forgot about the discussion at the time.

22. Shortly thereafter, defendant Nygreen's attitude towards plaintiff changed. In September Nygreen advised one Mr. Barnaby not to authorize a tuition fee for plaintiff to attend the course at N.Y.U., complained of in Paragraph 7 above, on the grounds, ostensibly that plaintiff "didn't need any more education".

23. On information and belief, the above course of conduct of the defendant Nygreen was not the only instance in which the defendant made overtures of a personal nature to a minority female employee of defendant NATIONAL BROADCASTING COMPANY.

24. That at some time during plaintiff's employe by defendants, or prior thereto, the defendant Nygreen had made advances and/or overtures of a similar nature to his secretary, an Hispanic female.

25. That she, the secretary did report the incident to the Personnel department of defendant NATIONAL BROADCASTING COMPANY.

26. That because of plaintiff's race and color, the defendant Nygreen expected her to have a demeaning attitude and to be subservient or acquiescing in his aforesaid course of conduct.

27. That when she did not fit his own preconceived stereotypical notions of what a Black woman should be like, he then treated her differently, than had she been White.

28. That aside from these personal incidents between plaintiff and defendant Nygreen her work was satisfactory.

29. That the conduct of defendants thereafter, in terminating her services, were for no good grounds or justification and for no other reason than the fact that she did not fit defendants' racial stereotypical image of what a Black woman should be like.

30. That the conduct of defendants in terminating plaintiff is thus violative of the rights and immunities of this plaintiff accorded by Title 42, U.S. Code Section 1981.

31. That up until the time of her discharge by the defendants on November 19, 1973 and since the date of her hiring on March 13, 1972, plaintiff was the only Black in her department in a supervisory capacity.

32. That as a result of the actions of defendants, plaintiff has suffered a loss of wages, benefits, and ancillary job rights including tuition refund, in excess of \$10,000.00.

WHEREFORE, your plaintiff prays this Court for a Judgment:

A. Reinstating her to her former position with all back pay and allowances, plus interest, plus counsel fees, to the same effect as if she had never been discharged.

B. Punitive damages in the amount of \$100,000.00 for the mental anguish and humiliation suffered at the hands of the defendant Nygreen.

C. Such other and further relief as to the Court may seem just and proper in the premises.

COLES and WEINER
Attorneys for Plaintiff
1775 Broadway
New York, N.Y. 10019
(212) 972-1278

by:


A Member of the Firm

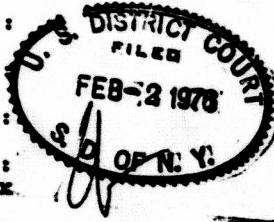
COLES & WEINER
ATTORNEYS AT LAW
1775 BROADWAY
NEW YORK, N.Y. 10019

5a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

5

-----x
BLANCHE MITCHELL, : 75 Civ. 5892 (CMW)
Plaintiff, :
-against- : NOTICE OF MOTION
NATIONAL BROADCASTING COMPANY, :
and S. THEODORE NYGREEN,
Manager of Information Services,
National Broadcasting Company,
Defendant. :
-----x



PLEASE TAKE NOTICE that upon the annexed affidavit of Howard L. Ganz, sworn to January 30, 1976, the exhibits annexed thereto, the accompanying memorandum of law, and all prior proceedings had herein, the undersigned will move this Court before the Hon. Charles M. Metzner, U.S.D.J., in Room 2201 of the United States Courthouse, Foley Square, New York, New York, on Monday, February 16, 1976, for an order granting summary judgment and dismissing the complaint herein pursuant to Rules 12(b)(6) and 56 of the Federal Rules of Civil Procedure, on the ground that the claims of discrimination in employment contained in the complaint have already been adjudicated and dismissed on the merits as frivolous by the New York State Division of Human Rights, the New York State Human Rights Appeal Board, and by the Appellate Division, First Department, of the Supreme Court of the State of New York, and granting defendants

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to 3/3/76
by L.

- 5 -

6a exhibit -A-

such other and further relief as may be just and proper.

Dated: New York, New York
January 30, 1976

Proskauer Rose Goetz & Mendelsohn

By Howard L. Gary
Attorneys for Defendants
300 Park Avenue
New York, N.Y. 10022
Tel. (212) 593-9000

TO: COLES and WEINER
Attorneys for Plaintiff
1775 Broadway
New York, New York 10019

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
BLANCHE MITCHELL, : 75 Civ. 5892 (CMM)
Plaintiff, :
-against- : STATEMENT OF MATERIAL
NATIONAL BROADCASTING COMPANY, : FACTS PURSUANT TO
AND S. THEODORE NYGREEN, : GENERAL RULE 9(g)
Manager of Information Services, :
National Broadcasting Company, :
Defendants. :
-----x

Pursuant to General Rule 9(g) of this Court,
defendants National Broadcasting Company, Inc. and
G. Theodore Nygreen set forth the following concise
statement of material facts as to which it contends there is
no genuine issue to be tried:

1. The claims asserted in this action, namely,
that plaintiff was unlawfully denied equal terms, conditions,
and privileges of employment and unlawfully discharged from
such employment on account of her race and color, have,
as a result of proceedings initiated by plaintiff, already
been the subject of adjudication by the New York State
Division of Human Rights, the New York State Human Rights
Appeal Board, and the Appellate Division, First Department,
of the Supreme Court of the State of New York.

2. The New York State Division of Human Rights
considered plaintiff's claims, and, on or about February 14,
1974, issued a determination dismissing such claims on the
merits.

3. On or about July 22, 1974, the New York State Human Rights Appeal Board affirmed in all respects the determination of the State Division of Human Rights.

4. On or about November 7, 1974, the Appellate Division, First Department, of the Supreme Court of the State of New York unanimously confirmed the decision of the Human Rights Appeal Board.

5. During the course of the administrative and judicial proceedings referred to above, plaintiff had, and availed herself of, the opportunity to adduce evidence in support of her claim, argue her version of the facts, and seek judicial review of the findings made against her.

Dated: New York, New York
January 30, 1976

Proskauer Rose Goetz & Mendelsohn

By Howard L. Levy
Attorneys for Defendant
300 Park Avenue
New York, New York 10022
(212) 593-9000

9a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
BLANCHE MITCHELL, : 75 Civ. 5892 (CMM)

Plaintiff, : AFFIDAVIT IN SUPPORT
-against- : OF DEFENDANTS' MOTION
NATIONAL BROADCASTING COMPANY, : FOR SUMMARY JUDGMENT

and S. THEODORE NYGREEN,
Manager of Information Services, :
National Broadcasting Company,
Defendants. :

-----x
STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

HOWARD L. GANZ, being duly sworn, deposes and says:

1. I am a member of the firm of Proskauer Rose Goetz & Mendelsohn, attorneys for defendants National Broadcasting Company, Inc. ("NBC") and G. Theodore Nygreen. I submit this affidavit in support of defendants' motion for an order granting summary judgment and dismissing the complaint pursuant to Rules 12(b)(6) and 56 of the Federal Rules of Civil Procedure.

2. In this action, plaintiff, who is Black, contends that defendants violated 42 U.S.C. §1981 by denying her equal terms, conditions, and privileges of employment and by terminating her employment on account of her race and color.

3. As the exhibits annexed hereto make clear, the claims of discrimination in employment contained in the complaint have already been adjudicated and dismissed on

the merits as frivolous by the New York State Division of Human Rights ("State Division"), the New York State Human Rights Appeal Board, and by the Appellate Division, First Department, of the Supreme Court of the State of New York.

4. Based upon the foregoing, and for the reasons more fully set forth in defendants' accompanying memorandum of law, no trial or further proceedings are necessary, and summary judgment should be entered dismissing the complaint in this action.

5. Annexed hereto as exhibits are true and accurate copies of the following documents:

Exhibit A: Complaint executed by Blanche Mitchell on or about December 3, 1973, and filed with the State Division on or about December 4, 1973, charging defendants NBC and Nygreen (and others) with the commission of "an unlawful discriminatory practice relating to employment . . . by denying me equal terms, conditions and privileges of employment and terminating me . . ." because of race and color;

Exhibit B: Determination and Order After Investigation, issued by the State Division on or about February 14, 1974, determining that "there is no probable cause to believe that the respondents [including, inter alia, defendants NBC and Nygreen] have engaged or are engaging in the unlawful

discriminatory practice complained of," and ordering dismissal of the State Division complaint;

Exhibit C: State Division Inter-Office Memorandum entitled "Reasons for NBC [No Probable Cause] Determination," dated February 8, 1974, and signed by George Benitez, Senior Field Representative of the State Division;

Exhibit D: Decision and Order of the New York State Human Rights Appeal Board, dated July 22, 1974, affirming in all respects the Determination and Order of the State Division;

Exhibit E: Petition for an order pursuant to Section 298 of the New York Executive Law and Article 78 of the CPLR setting aside the determination of the New York State Human Rights Appeal Board filed on behalf of Blanche Mitchell in the Appellate Division, First Department, of the Supreme Court of the State of New York, on or about August 26, 1974;

Exhibit F: Answer to Petition, filed on behalf of, inter alia, defendants NBC and Nygreen, in the Appellate Division, First Department, on or about October 10, 1974;

Exhibit G: Order entered on or about November 7, 1974 by the Appellate Division, First Department, unanimously confirming the determination of the New York State Human Rights Appeal Board and dismissing the petition.

6. In addition to the foregoing, on or about February 27, 1974, plaintiff Mitchell filed a charge of discrimination with the Equal Employment Opportunity Commission, in which she alleged that defendant NBC had discriminated against her as to wages, terms and conditions of employment, promotion, and discharge because she was Black. On or about February 14, 1975, the EEOC determined that there was no reasonable cause to credit the allegations made and, accordingly, dismissed the charge. Copies of the Notice of Charge filed by plaintiff Mitchell with the EEOC and the EEOC Determination are annexed hereto as Exhibits H and I, respectively.

Howard L. Ganz
Howard L. Ganz

Sworn to before me this
30th day of January, 1976.

Albert W. Ganz
Notary Public

ALBERT W. GANZ
NOTARY PUBLIC, State of New York
No. 31-4448120 - New York County
Commission Expires March 30, 1978

STATE OF NEW YORK : EXECUTIVE DEPARTMENT

STATE DIVISION OF HUMAN RIGHTS

on the complaint of

BLANCHE MITCHELL

Complainant,

against

NATIONAL BROADCASTING CO., DAVID
ADAMS, CHAIRMAN, JULIAN GOODMAN,
PRES.; DAVID GARDAM, VICE-PRES. OF
PERSONNEL; G.T. NYGREEN, MGR. OF
INFORMATION SERVICES & VERA
MAYER, MGR. OF LIBRARY &
RECORDS ADMINISTRATION

COMPLAINT NO.

I, Blanche Mitchell

residing at 150 West End Ave., Apt. 12P, New York, New York 10023 Tel No. 595-7725

charge National Broadcasting Co.; David Adams, Chairman, Julian Goodman, President; David Gardam, Vice-Pres. of Personnel, G.T. Nygreen, Manager of Information Services and Vera Mayer, Manager of Library and Records Administration

whose address is 30 Rockefeller Plaza, New York, N.Y. Tel No. 247-8300

with an unlawful discriminatory practice relating to employment on or about by denying me equal terms, conditions and privileges of employment and terminating me

because of my AGE (), RACE (x), CREED (), COLOR (x), NATIONAL ORIGIN (), SEX ().

The particulars are: DEC 4 - 1973

STATE DIVISION OF HUMAN RIGHTS

1. On March 13, 1972, I commenced working for N.B.C. (National Broadcasting Company) as an Operations Administrator for the Central Records Office in the Information Services Department under Mr. Robert Barnaby, Director of Information Services Department.
2. Mr. G.T. Nygreen became Manager of Information Services in December 1972. He reorganized the department and started complaining about my work and telling me that I have to prove my work in the job. I have over 14 years experience in Information Services. Ms. Ruth Preston, Supervisor of Records Administration, my immediate supervisor, highly recommended my performance.
3. On November 19, 1973, Vera Mayer, Manager of Library and Records Administration, terminated my employment. Ms. Mayer is under Mr. Nygreen's Management. The reasons given were unsatisfactory work performance, unwillingness to cooperate with others, insubordination and intransigence, which is not true.
4. There were about 26 employees in the Department and I was the only Black professional. Ms. Ruth Preston is retiring on December 31, 1973. I was hired to replace Ms. Preston after approximately two years training. I believe that I have been terminated before she retired so that I could not replace her.

Exhibit B
14a

Complainant: BLANCHE MITCHELL Complaint No. _____

Respondent: NATIONAL BROADCASTING CO., DAVID ADAMS, CHAIRMAN, JULIAN GOODMAN, PRES.; DAVID GARDAM, VICE-PRES. OF PERSONNEL, G.T. NYGREEN, MANAGER OF INFORMATION SERVICES AND VERA MAYER, MANAGER OF LIBRARY AND RECORDS ADMINISTRATION

5. I am Black. Based on the foregoing I charge the National Broadcasting Company, David Adams, Chairman, Julian Goodman, President, David Gardam, Vice-President of Personnel, G.T. Nygreen, Manager of Information Services and Vera Mayer, Manager of Library and Records Administration, with discriminating against me by denying me equal terms, conditions and privileges of employment and terminating me because of my race and color, in violation of the New York State Human Rights Law.

I, BLANCHE MITCHELL, the complainant in the above matter, have been informed of my right to private counsel.

Scratches
Signature

BEST COPY AVAILABLE

By reason of the unlawful discriminatory practice of respondent as herein alleged, complainant has already suffered damages in the sum of \$ UNSPECIFIED

I have not commenced any civil, criminal or administrative action or proceeding in any court or administrative agency based upon the same grievance.

CHARGE & TREATY
COMMISSION OF 1968
CITY OF NEW YORK, 1974
STATE OF NEW YORK } County of New York
COUNTY OF NEW YORK } County of New York
Blanche Mitchell (Signature of Complainant)

BLANCHE MITCHELL, being duly sworn, deposes and says, that she is the Complainant herein; that she has read the foregoing complaint and knows the contents thereof; that the same is true of her own knowledge except as to the matters therein stated on information and belief; and that as those matters she believes the same to be true.

Subscribed and sworn to before me this 10th day of December, 1973
Blanche Mitchell (Signature of Complainant)

From DAS Transcription

15a

DETERMINATION AND ORDER AFTER INVESTIGATION

Central No. C-31999-73
Local No. Ib-C-1574-73 Blanche Mitchell vs. National Broadcasting Company; David Adams, Chairman; Julian Goodman, President; David Gardam, Vice President of Employee Relations; S. Theodore Nygreen, Manager - Information Services; Vera Mayer, Manager - Library and Records Administration

On December 3, 1973, Blanche Mitchell, who is a Black, filed a verified complaint with the State Division of Human Rights charging the above-named respondents with an unlawful discriminatory practice relating to employment by denying her equal terms, conditions and privileges of employment and terminating her because of her race and color in violation of the Human Rights Law of the State of New York.

After investigation, the Division of Human Rights has determined that there is no probable cause to believe that the respondents have engaged or are engaging in the unlawful discriminatory practice complained of.

The respondents submitted documentation that controverted substantively the allegations in the complaint.

The "Affidavit of Ruth Preston" dated December 28, 1973 stated in part, "I interviewed Ms. Blanche Mitchell and recommended that she be hired as Operations Administrator...We hoped at that time that Ms. Mitchell would be a possible replacement for me upon my retirement this year...Initially things went smoothly and while I was somewhat disappointed that Ms. Mitchell did not learn her job as rapidly as I hoped. I had confidence that with time she would show the aptitude and initiative to fulfill our expectations and hopes for her...On March 29, 1973, she was told that she had not shown sufficient understanding and knowledge of her job to qualify as my successor." By this time it had become obvious to me that not only had Ms. Mitchell shown a substantial inability to perform effectively in the job bracket she was engaged to fill, but that she was unable to get along either with subordinates or superiors in the department...Accordingly she was given a 30 day probationary notice on the 17th of October...for the last thirty days prior to her termination her behavior was even more disruptive than before."

The documentation included correspondence which depicted a difficulty of the complainant to adjust to the regimen of the position complained about.

The conferences attended by the respondents and the complainant was initiated by both sides offers made by respondents to settle the differences since the complainant had stated that she did desire to return to her former position. The complainant had on both occasions asked for time to consider these offers but never instructed the Regional Office or the Field Representative assigned what disposition would be taken by her.

Ex. B
16a

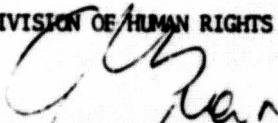
The documentation compiled and the oral testimony taken indicate that the complainant was dismissed for reasons other than those complained about.

Upon the foregoing, the complaint is ordered dismissed and the file is closed.

THE COMPLAINANT OR ANY PARTY TO THE PROCEEDING BEFORE THE DIVISION MAY APPEAL THIS ORDER TO THE STATE HUMAN RIGHTS APPEAL BOARD, 250 BROADWAY, NEW YORK, NEW YORK 10007, BY FILING A NOTICE OF APPEAL WITHIN FIFTEEN (15) DAYS AFTER THE DATE OF THE MAILING OF THIS ORDER.

Dated: February 11, 1974

STATE DIVISION OF HUMAN RIGHTS

By 
Courtney Brown
Regional Director

TO:

Ms. Blanche Mitchell, Complainant
150 West End Avenue, Apt. 19P
New York, New York 10023

National Broadcasting Company, Respondent
30 Rockefeller Plaza
New York, New York 10020

ATT: David Adams, Chairman

David Adams, Respondent
National Broadcasting Company
30 Rockefeller Plaza
New York, New York 10020

Julian Goodman, Respondent
National Broadcasting Company
30 Rockefeller Plaza
New York, New York 10020

David Gardam, Respondent
National Broadcasting Company
30 Rockefeller Plaza
New York, New York 10020

S. Theodore Nygreen, Respondent
National Broadcasting Company
30 Rockefeller Plaza
New York, New York 10020

Vera Mayer, Respondent
National Broadcasting Company
30 Rockefeller Plaza
New York, New York 10020

cc. Joan Simons, Esq.
National Broadcasting Company
30 Rockefeller Plaza
New York, New York 10020

STATE OF NEW YORK
Executive Department
DIVISION OF HUMAN RIGHTS

INTER-OFFICE MEMORANDUM

Reasons for NPC Determination

There is no evidence the respondent denied the complainant equal terms, conditions and privileges of employment and termination because of race and color. . . .

The respondent acknowledged complainant was hired March 13, 1972 as an Operations Administrator, to assist Ms. Preston, and to supervise three employees, 2 Blacks and 1 Asian: Stephanie Francis, a Black Records Clerk; Catherine Lim, an Asian Senior Records Clerk; Jean Foster, a Black Records Analyst I. He added the complainant was terminated basically because of her uncooperative and hostile attitude towards her superiors and subordinates. On one occasion the complainant took it upon herself to send an interdepartmental correspondence to Charles Lomax, Manager Salary Administration on February 27, 1973 and later to David Gardam, Vice President Employee Relations on March 22, 1973, requesting a salary grade review without having discussed it first with her immediate supervisor in accordance with NBC policy manual (CH X-5). Attached copy in folder.

The respondent submitted interdepartmental correspondence between the department heads describing the complainant's inability to acquire an understanding of all facets of her department's operation, unwillingness to cooperate with others, insubordination, and complaints by her staff members, created a definite morale problem in the department. The respondent had several meetings with the complainant regarding her procedural violations, work deficiencies and poor attitude, but to no avail. One month prior to the complainant's termination the respondent put her on a 30 day probation in which she showed no improvement and as a result the complainant was dismissed.

Herbert E. Alder, Field Representative, conducted the conference in which the complainant on several occasions became irate, boisterous and abusive towards the respondent with slander and profanity. Subsequent to the conference the complainant sent Mr. Alder a letter apologizing for her behavior.

The respondent had a departmental work force of 13 employees- 4 Blacks, 1 Asian and 8 others.

The undersigned recommends that this case be closed with a no probable cause finding based on the complainant's deficient work performance, insubordination and unwillingness to cooperate with her fellow workers.

George J. Bentz

Best Programs

(3) Міжнародні стандарти

STATE OF NEW YORK
Executive Department

STATE HUMAN RIGHTS APPEAL BOARD
Two World Trade Center 82nd floor
New York, N.Y. 10047
Tel: 488-2038 (area code 212)

To: All Parties to this Proceeding -- APPEAL NO. 2072

.....
.....

PLEASE TAKE NOTICE that herewith attached is the
Decision and Order of the State Human Rights Appeal Board.

ANY COMPLAINANT, RESPONDENT OR OTHER PERSON AGGRIEVED
BY THIS ORDER MAY OBTAIN JUDICIAL REVIEW THEREOF. Such
proceeding shall be brought in the Appellate Division of the
Supreme Court of the State in the appropriate judicial
department within 30 days of service of this Order. (See
Section 298, Human Rights Law.)

Attachment:

19a

EX. D

STATE OF NEW YORK: EXECUTIVE DEPARTMENT
STATE HUMAN RIGHTS APPEAL BOARD

BLANCHE MITCHELL, Complainant-Appellant

vs

O R D E R

NATIONAL BROADCASTING COMPANY, DAVID ADAMS,
CHAIRMAN; JULIAN GOODMAN, PRESIDENT; DAVID
GARDAM, VICE PRESIDENT OF EMPLOYEE RELATIONS;
S. THEODORE BYGREEN, MANAGER INFORMATION
SERVICES; VERA MAYER, MANAGER, LIBRARY AND
RECORDS ADMINISTRATION,
Respondents

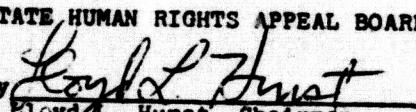
Case No. C-31999-73

APPEAL NO. 2072

The above-entitled appeal having come on to be heard before Hon. Albert S. Pacetta on the 27th day of March, 1974, and complainant-appellant having appeared personally and argued in her own behalf, and respondents having appeared by George J. Hiltzik, Esq., and Joan N. Simon, Esq., of Counsel, who submitted a letter brief, and the State Division of Human Rights having appeared by Henry Spitz, Esq., General Counsel, Leonard Stecher, Esq., of Counsel, who submitted on the record, and the Board having reviewed the record, and having considered the argument of the complainant-appellant and letter brief of the respondents, and two members having decided that the Order appealed from herein is not arbitrary, capricious, nor an unwarranted exercise of discretion and having voted to affirm said Order, and two members having decided that the Order appealed from herein is arbitrary, capricious, and an unwarranted exercise of discretion and having voted to vacate said Order and remand the proceedings to the State Division of Human Rights for further and other proceedings pursuant to the Human Rights Law, and there being no majority of the Board voting to affirm, modify, remand, or reverse said Order, it is

ORDERED that the Determination and Order of the State Division of Human Rights made herein on the 11th day of February, 1974 be, and the same hereby is in all respects affirmed.

STATE HUMAN RIGHTS APPEAL BOARD

By 
Floyd L. Hurst, Chairman

Dated: July 22, 1974

To: (see attached list)

20a

To:

Ms. Blanche Mitchell
150 West End Avenue, Apt. 19P
New York, New York 10023

National Broadcasting Company
30 Rockefeller Plaza
New York, N.Y. 10020

David Adams, Chairman
National Broadcasting Company
30 Rockefeller Plaza
New York, N.Y. 10020

Julian Goodman
National Broadcasting Company
30 Rockefeller Plaza
New York, N.Y. 10020

David Gardam
National Broadcasting Company
30 Rockefeller Plaza
New York, N.Y. 10020

S. Theodore Nygreen
National Broadcasting Company
30 Rockefeller Plaza
New York, N.Y. 10020

Vera Mayer
National Broadcasting Company
30 Rockefeller Plaza
New York, N.Y. 10020

Joan Simons, Esq.
National Broadcasting Company
30 Rockefeller Plaza
New York, N.Y. 10020

Commissioner Jack M. Sable
State Division of Human Rights
270 Broadway
New York, N.Y. 10007

Henry Spitz, Esq., General Counsel
State Division of Human Rights
270 Broadway
New York, N.Y. 10007

21a

STATE OF NEW YORK: EXECUTIVE DEPARTMENT
STATE HUMAN RIGHTS APPEAL BOARD

DECISION

BLANCHE MITCHELL, COMPLAINANT-APPELLANT

Case No. C-31999-73

VS.

APPEAL NO. 2072

NATIONAL BROADCASTING COMPANY, DAVID ADAMS,
CHAIRMAN; JULIAN GOODMAN, PRESIDENT; DAVID
GARDAM, VICE PRESIDENT OF EMPLOYEE RELATIONS;
S. THEODORE NYGREEN, MANAGER INFORMATION
SERVICES; VERA MAYER, MANAGER, LIBRARY AND
RECORDS ADMINISTRATION.

RESPONDENTS

This is an appeal from a Determination and Order after
Investigation by the State Division of Human Rights, dated February 11,
1974, dismissing the complaint which charged the above named respondents
with an unlawful discriminatory practice relating to employment
because of race and color, in violation of the Human Rights Law of
the State of New York. The appellant is black.

The record shows that complainant's employment was
terminated by respondents because of unsatisfactory performance of
duties. There is no evidence in the record to support the charge of
unlawful discrimination because of race and color.

Accordingly, the Determination of the State Division of
Human Rights, dismissing the complaint, was not arbitrary or capricious,
but a reasonable exercise of discretion, and it is hereby in all
respects affirmed.

STATE HUMAN RIGHTS APPEAL BOARD

Dated: July 22, 1974


Albert S. Pacetta, Presiding Member

The following member concurs in the foregoing decision and opinion:

HON. IRMA VIDAL SANTAELLA

22a

STATE OF NEW YORK: EXECUTIVE DEPARTMENT
STATE HUMAN RIGHTS APPEAL BOARD

BLANCHE MITCHELL, Complainant-Appellant

vs

DISSENTING OPINION

Case No. C-31999-73

APPEAL NO. 2072

NATIONAL BROADCASTING COMPANY, DAVID ADAMS,
CHAIRMAN; JULIAN GOODMAN, PRESIDENT; DAVID
GARDAM, VICE PRESIDENT OF EMPLOYEE RELATIONS;
S. THEODORE NYGREEN, MANAGER INFORMATION
SERVICES; VERA MAYER, MANAGER, LIBRARY AND
RECORDS ADMINISTRATION,
Respondents

I dissent from the decision herein and vote to remand this matter to the Division of Human Rights for further investigation.

There are several glaring inconsistencies contained in the record which, in my opinion, warrant a re-investigation of this matter. Primarily, the incidents cited by respondents wherein appellant was, at times, 'abusive, bothersome, taunting, argumentive, and uncooperative,' seem, at best, second-hand information. The record contains documents submitted in support of this claim, but by far, the vast majority contain clauses such as, 'He said, she said, as I understand,' and the like. In my opinion, the persons involved, especially appellant's subordinates should have been interviewed since it is claimed a "potential 'mutiny'" had to be averted because of appellant's "behavior" and "attitude".

Likewise, respondents claim that appellant's work performance was minimal. The exhibits submitted by respondents in support of the same were memos to and from respondents Mayer and Nygreen with appellant listed as 'subject'. Appellant asked the field representative herein to review her work, and the record is silent in this respect.

note from the record that appellant commenced her work for respondents in March 1972, with excellent recommendations from RCA, her former employer. It appears that appellant was hired to eventually replace one Ruth Preston, Supervisor of Records Administrations, who was to retire in two years. In the meantime, appellant was hired as Operations Administrator. As Operations Administrator, appellant was to supervise the Central Records Department. Yet, in August 1972, she became separated from her staff. One must conclude that she could not effectively supervise or learn the overall work performance and/or ability of her staff.

23a

while thus set apart. Subsequently respondents moved appellant back with her staff and gave as "Part of the reason...to move Blanche (the appellant herein) out of the office in Room 736 and back to 2MLW, was the increasing dissatisfaction of the Program Analysts with her behavior." It does not appear that the respondents sought to enable appellant to effectuate the responsibilities of her job, and the Division did not inquire into this matter.

The record reveals that despite appellant's so-called marginally poor work performance, respondents approved a 5.9% merit increase effective March 25, 1973 with the expectation "that the raise would provide Blanche with added incentive to concentrate on learning her job adequately and improving her performance." It should also be noted that as late as April 4, 1973, "Ms. Mitchell was not notably deficient in performing her daily assigned functions." Further, it appears that appellant took charge of the Records Administrations Department some three months after her appointment as Operations Administrator while Ms. Preston went away on her scheduled vacation. There is nothing in the record to reveal that she performed below company standards then or later, until respondent Nygreen became Manager of Information Services.

Respondents also contend that appellant "failed to acquire an understanding of all facets of your department's operation." However, appellant claims that:

"Mrs. Preston devised and instituted all of the complex systems and procedures in Central Records, but they were not reduced to writing. So, there are no written criteria to use in training.

"I am the first person to have been trained for that position, so the criteria for a training period have not been established."

The file contains a job description relating to appellant's previous position as Operations Administrator; however, it is not clear when this description was prepared and if there was a written critique for the job which appellant was hired two years in advance to replace a retiring supervisor. One must agree that appellant's claim seems logical in view of the aforementioned fact.

Respondents stated that appellant exercised poor judgment, citing, in particular, her direct request to the Personnel Department of NBC for a salary review. Respondent S. Theodore Nygreen reprimanded appellant for such action. The record contains a memorandum entitled Interdepartment Correspondence, dated December 26, 1973, 'From Daniel Sassi To Joan Simon Subject Blanche Mitchell, which provides:

"1) The Personnel Policy Manual, in Chapter X, 'Salary Administration,' paragraph 5, indicates that 'Supervisors are responsible for informing...Personnel...of any changes in the duties and responsibilities of positions within their department, in order that job descriptions and job evaluations may be maintained on a current basis.' In my view, this means that supervisors have the responsibility for initiating such matters, but does not make them the only initiators." (emphasis mine)

A fair reading of this memorandum suggests that although appellant's action to ask for a review of her salary was not in line with the "status quo", it was in keeping with company policy and not violative thereof.

The file contains some notation of an effort to settle this case between the respondents and the appellant; however, it is not clear if all parties were fairly apprised of events. I would recommend that the record be clarified in this regard.

On the basis of the record made herein, I would vote to remand this matter to the Division of Human Rights for further investigation and a final determination therefater based on the record as a whole.

STATE HUMAN RIGHTS APPEAL BOARD

Dated: July 22, 1974


Lloyd S. Hurst

The following member concurs in the foregoing opinion:

HON. EMIL LEVIN

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT

BLANCHE MITCHELL,

Petitioner-Appellant

against

The State Division on Human Rights,
The State Human Rights Appeal Board
and National Broadcasting Co.; David
Adams, Chairman, Julian Goodman, Pres.,
David Gardam, Vice-Pres. of Personnel;
G.T. Nygreen, Mgr. of Information
Services & Vera Mayer, Mgr. of Library
& Records Administration

NOTICE OF
PETITION

Respondents

S I R S :

PLEASE TAKE NOTICE, that upon the annexed petition
of BLANCHE MITCHELL, verified the 26th day of August, 1974, an
application will be made at a term of this court to be held
at the courthouse thereof, located at Madison Avenue and 25th
Street, Borough of Manhattan, City of New York, on the 24th
day of September, 1974, at 10:00 a.m., or as soon thereafter
as counsel can be heard, for a judgment pursuant to §298 of the
Human Rights Law and pursuant to CPLR Article 78, setting aside
the determination and order made by respondents dismissing
petitioner's complaint of an unlawful discriminatory practice
and denying her reinstatement as Operations Administrator,
Records Department, and compelling said respondents to reinstate
petitioner as such, and awarding her back pay, or in the
alternative remanding this matter to the State Division of
Human Rights for further investigation and for such other and
further relief as may be just and proper.

Dated: New York, N.Y.
August 26, 1974

Yours, etc.,

BERNARD C. DURHAM,
FRANK R. MEYER, of counsel
Attorneys for Petitioner-Appellant
The Legal Aid Society
267 West 17th Street
New York, N.Y. 10011

Ex. E 26a

TO: State Human Rights Appeal Board
Two World Trade Center, 82nd Floor
New York, N.Y. 10047

New York State Division on Human Rights
270 Broadway
New York, N.Y.

National Broadcasting Company, Respondent
30 Rockefeller Plaza
New York, N.Y. 10020
Attention: David Adams, Chairman

David Adams, Respondent
National Broadcasting Company
30 Rockefeller Plaza
New York, N.Y. 10020

Julian Goodman, Respondent
National Broadcasting Company
30 Rockefeller Plaza
New York, N.Y. 10020

David Gardam, Respondent
National Broadcasting Company
30 Rockefeller Plaza
New York, N.Y. 10020

S. Theodore Nygreen, Respondent
National Broadcasting Company
30 Rockefeller Plaza
New York, N.Y. 10020

cc. George Hiltzik, Esq.
National Broadcasting Company
30 Rockefeller Plaza
New York, N.Y. 10020

Vera Mayer, Respondent
National Broadcasting Company
30 Rockefeller Plaza
New York, N.Y. 10020

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT

BLANCHE MITCHELL,

Petitioner-Appellant

against

The State Division on Human Rights,
The State Human Rights Appeal Board
and National Broadcasting Co.; David
Adams, Chairman, Julian Goodman, Pres.;
David Gardam, Vice-Pres. of Personnel;
G.T. Nygreen, Mgr. of Information
Services & Vera Mayer, Mgr. of Library
& Records Administration,

PETITION

Respondents

TO: THE APPELLATE DIVISION OF THE SUPREME
COURT OF THE STATE OF NEW YORK, FIRST
JUDICIAL DEPARTMENT

Petitioner, Blanche Mitchell, respectfully alleges
as follows:

1. Petitioner was employed by the National Broadcasting Company on March 13, 1972 as Operations Administrator of the Central Records Department.
2. Petitioner was fired from that position on November 19, 1973 for alleged insubordination and incompetence.
3. On December 3, 1973 petitioner filed a complaint with the State Division of Human Rights alleging that the National Broadcasting Company had fired her because she is black in violation of Section 296 of the Human Rights Law of the State of New York. A copy of said complaint is annexed hereto as Exhibit "A".
4. After the filing of said complaint on December 3, 1973, the following proceedings ensued:
 - a) Pursuant to Notice from the State Division of Human Rights, a conference was conducted before Courtney Brown, a regional director of such Division on December 18, 1973 at which petitioner appeared. National Broadcasting Company appeared by its attorney Joan Simon. An informal discussion

28a

ensued and NBC submitted correspondence from its records which was made part of the record below. The conference was adjourned until January of 1974 to allow respondents time to submit additional documentation.

b) In January of 1974 (petitioner cannot recall the exact date) a second conference was held before Herbert E. Alden, Field Representative of the Division at which petitioner also appeared. Joan Simon, Mel Black, Ruth Preston and Ted Nygreen appeared for the respondents, National Broadcasting Company. Further oral discussion ensued at that time.

c) By a determination dated February 11, 1974, the State Division of Human Rights, by Courtney Brown, Regional Director, dismissed petitioner's complaint on the ground that no probable cause to believe that petitioner had been fired because of her race existed. A copy of said determination is attached hereto as Exhibit "B".

d) By a notice dated February 12, 1974 petitioner appealed said determination to the State Human Rights Appeal Board. A copy of said Notice of Appeal is annexed hereto as Exhibit "C" and of the letter in support thereof as Exhibit "D".

e) After argument before the Board on March 27, 1973, by order dated July 22, 1974, the order appealed from was sustained. Petitioner received service of said order by mail on July 25, 1974. A copy of said order together with the accompanying opinion is annexed hereto as Exhibit "E".

5. The determination by the State Division of Human Rights and the Order of the State Human Rights Appeal Board constituted final agency action under the Human Rights Law of the State of New York and the Civil Practice Law and Rules.

6. Said determination and order dismissing the complaint were made in violation of law, were arbitrary and capricious and constituted an abuse of discretion in that the documents submitted by respondent, National Broadcasting Company and the individual respondents in its employ are replete with

contradictions and were based totally on hearsay.

7. In memoranda dated March 16, 1973 and April 4, 1973, Mr. G.T. Nygreen writing to petitioner and Roy Cheney respectively calls petitioner's request for a salary review by the personnel department "an error in judgment" and "absolutely insubordinate". Yet a memorandum dated December 26, 1973 from Mr. Sassi to Joan Simon states that it is company policy to allow employees to initiate such requests themselves.

8. Respondents have charged that petitioner "was abusive, bothersome, taunting, argumentative and uncooperative". Yet these charges are based on pure hearsay and the Division failed to directly question many of those persons who allegedly made such charges.

9. Petitioner was accused of failing to maintain good relations with her inferiors. Yet these inferiors were never questioned directly to determine the validity of this accusation.

10. Petitioner denies that she was less than competent in her position.

11. In March of 1973 petitioner was given a 5.9% merit raise.

12. Petitioner came to National Broadcasting Company with the highest references from her former employer, RCA. She employed the same energy, dedication and talent to her position at National Broadcasting Company as she did at RCA. Petitioner contends that her dismissal was taken because she was next in line to replace Ruth Preston, her immediate supervisor, who was to retire shortly. Petitioner requests this court to note that she would be higher than any other minority group person in her department had such promotion been approved.

13. Petitioner is entitled to be reinstated to her former position and she is wrongfully and unlawfully being denied the right to such employment, and petitioner will continue to be denied this right unless this court annuls

the determination of said Human Rights Division and the order of said Human Rights Appeal Board and compel the National Broadcasting Company to reinstate petitioner.

14. No previous application for the relief herein sought has been made to any court or judge.

WHEREFORE, petitioner prays that a final judgment be made and entered herein, reversing, annulling and setting aside the determination of the State Division of Human Rights and the order of the State Human Rights Appeal Board, and compelling National Broadcasting Company to reinstate petitioner and that petitioner be so reinstated, or in the alternative that this proceeding be remanded to the Division for further investigation, and for such other and further relief as is just and proper, together with the costs and disbursements of this proceeding.

Dated: New York, N.Y.
August 26, 1974

151
BLANCHE MITCHELL

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS.:

BLANCHE MITCHELL, being duly sworn, deposes and says that she is the petitioner in the within action; that deponent has read the foregoing petition and knows the contents thereof; that the same are true to her own knowledge, except as to the matters therein stated to be alleged on information and belief and that as to those matters she believes them to be true.

151
BLANCHE MITCHELL

Sworn to before me this
26th day of August, 1974

MARIA ISABEL CORREA
Commissioner of Deeds
City of New York No. 1-724
Certificate filed in New York County
Commission Expires 1-1-1976

31a

STATE OF NEW YORK : EXECUTIVE DEPARTMENT.

STATE DIVISION OF HUMAN RIGHTS
on the complaint of

BLANCHE MITCHELL Complainant,
against
NATIONAL BROADCASTING CO.; DAVID
ADAMS, CHAIRMAN, JULIAN GOODMAN,
PRES.; DAVID GARDAM, VICE-PRES. OF
PERSONNEL; G.T. NYGREEN, MGR. OF
INFORMATION SERVICES & VERA
MAYER, MGR. OF LIBRARY &
RECORDS ADMINISTRATION Respondent

COMPLAINT NO.

1. Blanche Mitchell
residing at 150 West End Ave., Apt. 19P, New York, New York 10023 Tel No. 595-7725
charge National Broadcasting Co., David Adams, Chairman, Julian Goodman,
President; David Gardam, Vice-Pres. of Personnel, G.T. Nygreen,
Manager of Information Services and Vera Mayer, Manager of Library
and Records Administration
whose address is 30 Rockefeller Plaza, New York, N.Y. Tel No. 247-8300
with an unlawful discriminatory practice relating to employment on or about
by denying me equal terms, conditions and privileges of employment and
terminating me
because of my AGE (), RACE (X), CREED (), COLOR (X), NATIONAL ORIGIN (), SEX ().
The particulars are:

1. On March 13, 1972, I commenced working for N.B.C. (National Broadcasting Company) as an Operations Administrator for the Central Records Office in the Information Services Department under Mr. Robert Barnaby, Director of Information Services Department.
2. Mr. G.T. Nygreen became Manager of Information Services in December 1972. He reorganized the department and started complaining about my work and telling me that I have to prove my work in the job. I have over 14 years experience in Information Services. Ms. Ruth Preston, Supervisor of Records Administration, my immediate supervisor, highly recommended my performance.
3. On November 19, 1973, Vera Mayer, Manager of Library and Records Administration, terminated my employment. Ms. Mayer is under Mr. Nygreen's Management. The reasons given were unsatisfactory work performance, unwillingness to cooperate with others, insubordination and intransigence, which is not true.
4. There were about 26 employees in the Department and I was the only Black professional. Ms. Ruth Preston is retiring on December 31, 1973. I was hired to replace Ms. Preston after approximately two years training. I believe that I have been terminated before she retired so that I could not replace her.

Exhibit A

32a

Complainant: BLANCHE MITCHELL Complaint No. _____

Respondent: NATIONAL BROADCASTING CO.: DAVID ADAMS, CHAIRMAN, JULIAN GOODMAN, PRES., DAVID GARDAM, VICE-PRES. OF PERSONNEL, G.T. NYGREEN, MANAGER OF INFORMATION SERVICES AND VERA MAYER, MANAGER OF LIBRARY AND RECORDS ADMINISTRATION

5. I am Black. Based on the foregoing I charge the National Broadcasting Company; David Adams, Chairman, Julian Goodman, President, David Gardam, Vice-President of Personnel, G.T. Nygreen, Manager of Information Services and Vera Mayer, Manager of Library and Records Administration, with discriminating against me by denying me equal terms, conditions and privileges of employment and terminating me because of my race and color, in violation of the New York State Human Rights Law.

I, BLANCHE MITCHELL, the complainant in the above matter, have been informed of my right to private counsel.

Blanche Mitchell
Signature

By reason of the unlawful discriminatory practice of respondent as herein alleged, complainant has already suffered damages in the sum of \$ UNSPECIFIED

I have not commenced any civil, criminal or administrative action or proceeding in any court or administrative agency based upon the same grievance.

STATE OF NEW YORK
COUNTY OF NEW YORK

COM: 74-11645
CITY OF NEW YORK
CONFIDENTIAL
CITY OF NEW YORK
SS:

Blanche Mitchell
(Signature of Complainant)

BLANCHE MITCHELL, being duly sworn, deposes and says: that she is the Complainant herein; that she has read the foregoing complaint and knows the contents thereof; that the same is true of her own knowledge except as to matters therein stated on information and belief; and that as those matters she believes the same to be true.

Subscribed and sworn to before me
day of 10

33a
Blanche Mitchell
(Signature of Complainant)

DISCRIMINATION AND ORDER FTER INVESTIGATION

Central No. C-31999-73

Local No. Ib-C-1574-73 Blanche Mitchell vs. National Broadcasting Company; David Adams, Chairman; Julian Goodman, President; David Gardam, Vice President of Employee Relations; S. Theodore Nygreen, Manager - Information Services; Vera Mayer, Manager - Library and Records Administration

On December 3, 1973, Blanche Mitchell, who is a Black, filed a verified complaint with the State Division of Human Rights charging the above-named respondents with an unlawful discriminatory practice relating to employment by denying her equal terms, conditions and privileges of employment and terminating her because of her race and color in violation of the Human Rights Law of the State of New York.

After investigation, the Division of Human Rights has determined that there is no probable cause to believe that the respondents have engaged or are engaging in the unlawful discriminatory practice complained of.

The respondents submitted documentation that controverted substantively the allegations in the complaint.

The "Affidavit of Ruth Preston" dated December 28, 1973 stated in part, "I interviewed Ms. Blanche Mitchell and recommended that she be hired as Operations Administrator...We hope at that time that Ms. Mitchell would be a possible replacement for me upon my retirement this year...Initially things went smoothly and while I was somewhat disappointed that Ms. Mitchell did not learn her job as rapidly as I hoped. I had confidence that with time she would show the aptitude and initiative to fulfill our expectations and hopes for her...On March 29, 1973 she was told that she had not shown sufficient understanding and knowledge of her job to qualify as my successor. By this time it had become obvious to me that not only had Ms. Mitchell shown a substantial inability to perform effectively in the job bracket she was engaged to fill, but that she was unable to get along either with subordinates or superiors in the department...Accordingly she was given a 30 day probationary notice on the 17th of October...for the last thirty days prior to her termination her behavior was even more disruptive than before."

The documentation included correspondence which depicted a difficulty of the complainant to adjust to the regimens of the position complained about.

The conferences attended by the respondents and the complainant was marked by bona fide offers made by respondents to settle the differences since the complainant had stated that she did desire to return to her former position. The complainant had on both occasions been given time to consider these offers but never instructed the Regional Office or the Field Representative assigned what disposition would be taken by her.

Exhibit B

34a

5881
2

The documentation compiled and the oral testimony taken indicate that the complainant was dismissed for reasons other than those complained about.

Upon the foregoing, the complaint is ordered dismissed and the file is closed.

THE COMPLAINANT OR ANY PARTY TO THE PROCEEDING BEFORE THE DIVISION MAY APPEAL THIS ORDER TO THE STATE HUMAN RIGHTS APPEAL BOARD, 250 BROADWAY, NEW YORK, NEW YORK 10007, BY FILING A NOTICE OF APPEAL WITHIN FIFTEEN (15) DAYS AFTER THE DATE OF THE MAILING OF THIS ORDER.

Dated: February 11, 1974

STATE DIVISION OF HUMAN RIGHTS

By Courtney Brown
Courtney Brown
Regional Director

TO:

Ms. Blanche Mitchell, Complainant
150 West End Avenue, Apt. 19P
New York, New York 10023

National Broadcasting Company, Respondent
30 Rockefeller Plaza
New York, New York 10020

ATT: David Adams, Chairman

David Adams, Respondent
National Broadcasting Company
30 Rockefeller Plaza
New York, New York 10020

Julian Goodman, Respondent
National Broadcasting Company
30 Rockefeller Plaza
New York, New York 10020

David Gardam, Respondent
National Broadcasting Company
30 Rockefeller Plaza
New York, New York 10020

S. Theodore Nygreen, Respondent
National Broadcasting Company
30 Rockefeller Plaza
New York, New York 10020

Vera Mayer, Respondent
National Broadcasting Company
30 Rockefeller Plaza
New York, New York 10020

cc. Joan Simons, Esq.
National Broadcasting Company
30 Rockefeller Plaza
New York, New York 10020

Exhibit B²

35a

150 West End Avenue 19P
New York, New York 10023

12 February 1973

State Human Rights Appeal Board
250 Broadway
New York, New York 10007

Sirs:

I forthwith appeal the Determination and Order number C-31999-73 dated February 11, 1974 which dismisses my Complaint (number IB-C-1574-73) against The National Broadcasting Company, et al.

My appeal is based on the following items:

No investigation of the allegations was made. The Determination was made solely on documentation supplied by and in consort with the Respondents. My allegations are true.

Thank you very much for any consideration you may render to the matter above stated.

Very sincerely,

BCMitchell

BCMitchell

cc: Mr Jack Sable

P.S. The statement made in the Determination that I have offered my former position and that I resign is not true, *box*

Exhibit 'C'.

36a

Date: 6 March 1974

To: The Appeal Board, State of New York

Subject: Appeal number 2072

I am sending this statement in further support of my Appeal of Decision and Order number C-31999-73 by the Human Rights Commission. Also, I would like to respectfully request this matter be handled as soon as possible because I am still unemployed as NBC will not give me a fair and proper reference. I shall probably not be able to gain employment until this matter is settled.

The copies of memoranda in the complaint file written by me were written as a result of constant agitation and provocation by my management which kept me in a constant state of stress. However, the situations and occurrences depicted are true. If the items mentioned had been examined/investigated by the Commission, a Decision and Order favorable to me would have been put forth. Some of the items I feel the need to especially call your attention to are as follows:

- 1 As per NBC Personnel Policies, an employee has the right to address the Salary Administration Department directly for the purpose of requesting a Salary Grade Review. Mr Nygreen, at the suggestion of Ms Bettye Hoffmann (Vice President of Information Services), took the memos and ~~copy~~ I sent to Mr Lomax and Ms Collins from their desks (dated 27 February '73) before the memos were seen by the addressees. A proper investigation would have shown white-employees have been able to use this avenue of approach to gain an increase in their salaries via a salary upgrading. This was unequal treatment and denial of a privilege of employment at NBC.
- 2 The NBC Personnel Policies Manual states a Grade 11 employee (which I was) is to receive a salary increase at eleven-month intervals. A Grade 18 employee is to receive a salary increase at one-year intervals, or, at the discretion of management but no sooner than after one year. A full investigation would have shown Betty Reed (who is a manager in Information Services) is a grade 18 and received a salary increase at about an eight-month interval. I did not receive an increase after 11 months, but after I wrote the 2/27 memo. The Commission did not attempt to investigate this difference in treatment.
- 3 An example of complaints by the Respondents against me is one of my not completing an assignment which entailed working in the General Library using Library materials. Ruth Preston explains that I followed the established procedure for filling requests of that nature on page 2 of her memo to G T Nygreen dated September 4, 1973 a copy of which is in the complaint file. A reference to this memo by the Commission would have

Exhibit D

3.7a

shown paragraph 13 of Ms Preston's affidavit/voided by her own 9/4 memo. Also, an investigation would have shown to other professional in the department (all of whom are white) was assigned work in other areas of the department.

4 Program Analysis and Library staff members expected and requested of me to bring for them and return items in the Central Records office. An investigation would have shown no Program Analysis or Library staff members were asked to serve as messengers carting items back and forth.

5 When Miss Reed requested a premature salary increase, Mr Nygreen readily secured one for her. When I attempted to secure one for myself as he would not, Mr Nygreen accused me of "selling" myself. An investigation would have shown Mr Nygreen did not use such language to Miss Reed. Also, an examination of the 2/27 memo would have shown attention was being called to requirements of the position I held which were commensurate with my background. We were attempting to secure a just remuneration for our services, not ourselves as implied by the language Mr Nygreen used to me.

6 Mr Nygreen mentions in his memo to me (3/16/73) "... channels for advancement of highly qualified employees ...". I was interviewed for a position as a Researcher in WNBC-TV by L Johnson, Manager - Community Affairs on 6/8/73. I had been informed by Personnel I was to be the first applicant interviewed as I was the most qualified of the applicants. An investigation would have shown about eighty persons were interviewed before Mr Johnson hired a white who was less qualified than I. Mr Nygreen let me know he contacted Mr Johnson prior to my interview. Personnel let me know Mr Nygreen contacted Mr Johnson after my interview - I was discussed on both occasions. I can only believe the contacts were made to deny me equal consideration for that position, because, it is against customary policy at NBC for an applicant's management to initiate the contact between an applicant's management and the Interviewer.

7 Ruth Preston, as Supervisor of Central Records, stated she expected me to learn the organization, administration, functions, indexes and files structures, contents, etc of Central Records within six months. Yet, the need to hire someone over 1½ years prior to Mrs Preston's expected retirement was felt by Information Services management. It is to be noted also she requested and secured an above average salary increase for me after working with me almost a year. She did this to induce me to continue my employment in Central Records with expectations of being promoted to the position of Supervisor. Mrs Preston did not begin to complain about me until after I wrote the 2/27 memo to Mr Lomax. And,

a Mrs Preston stated on 18 December she had worked in Central Records 35 years and was continuing to learn her position

Exhibit D-2

- b Mrs Preston devised and instituted all of the complex systems and procedures in Central Records, but they were not reduced to writing. So, there are no written criteria to use in training.
- c I am the first person to have been trained for that position, so the criteria for a training period have not been established.
- d The Commission made no attempt to verify difficulties I had in gaining information and training.
- 8 The Commission's Decision appears to be based solely on the Respondents' self-serving documentation without being mindful of the contradictions contained therein. Another example is the apparent contradictions in the affidavit by Ruth Preston of paragraphs 7 & 8 one to the other. Also, I was not given the opportunity to respond to accusations made against me, nor were the responses I made to the Notice of Termination (10/17/73) taken into consideration/available to the Commission (memo to David Gardam - 11/16/73).
- 9 Mr Nygreen announced at the 18 December Conference another person had been hired to fill the position I formerly held who is black. A proper investigation would have shown Ms Mitchell, the new hire, is to fill the position temporarily. Potentially, she has no upward mobility as she has a high school education, only. Therefore, Ms Mitchell will be terminated as a white has already been offered the job as soon as NBC has been able to obtain a dismissal of my complaint. Thus, an offer of reinstatement to me could not have been a bona fide one as stated in the Commission's Decision and Order.
- 10 It is a policy of the RCA Corporation (NBC is a subsidiary) to issue a refund of retirement money to former employees about six weeks after termination. The refund of my retirement money was held in abeyance by NBC. I notified RCA via a letter to Mr Robert Sarnoff (1/14/74) whereupon the refund was sent to immediately. An investigation by the Commission would have shown NBC had no right to delay the issuance of my refund, but had done so to induce me to withdraw this complaint. NBC et al conspired to deny me equal terms, conditions and privileges of even a former employee.

Thank you very much for consideration you may render the subject matter of this complaint...

Respectfully yours,

Blanche C Mitchell

Exhibit D³

Lloyd L. Hurst, Chairman

To: (see attached list)

STATE OF NEW YORK: EXECUTIVE DEPARTMENT
STATE HUMAN RIGHTS APPEAL BOARD

BLANCHE MITCHELL, Complainant-Appellant

vs

ORDER

NATIONAL BROADCASTING COMPANY, DAVID ADAMS,
CHAIRMAN; JULIAN GOODMAN, PRESIDENT; DAVID
GARDAM, VICE PRESIDENT OF EMPLOYEE RELATIONS;
S. THEODORE BYGREEN, MANAGER INFORMATION
SERVICES; VERA MAYER, MANAGER, LIBRARY AND
RECORDS ADMINISTRATION,
Respondents

Case No. C-31999-73

APPEAL NO. 2072

Not presented to the Board just in time for hearing.
The above-entitled appeal having come on to be heard before
Hon. Albert S. Pacetta on the 27th day of March, 1974, and
complainant-appellant having appeared personally and argued in her
own behalf, and respondents having appeared by George J. Hiltzik,
Esq., and Joan N. Simon, Esq., of Counsel, who submitted a letter
brief, and the State Division of Human Rights having appeared by
Henry Spitz, Esq., General Counsel, Leonard Stecher, Esq., of Counsel,
who submitted on the record, and the Board having reviewed the
record, and having considered the argument of the complainant-appellant
and letter brief of the respondents, and two members having decided
that the Order appealed from herein is not arbitrary, capricious, nor
an unwarranted exercise of discretion and having voted to affirm said
Order, and two members having decided that the Order appealed from
herein is arbitrary, capricious, and an unwarranted exercise of
discretion and having voted to vacate said Order and remand the
proceedings to the State Division of Human Rights for further and
other proceedings pursuant to the Human Rights Law, and there being
no majority of the Board voting to affirm, modify, remand, or reverse
said Order, it is

ORDERED that the Determination and Order of the State
Division of Human Rights made herein on the 11th day of February,
1974 be, and the same hereby is in all respects affirmed.

STATE HUMAN RIGHTS APPEAL BOARD

Dated: July 22, 1974

By *Lloyd L. Hurst*
Lloyd L. Hurst, Chairman

To: (see attached list)

Exhibit E'

40.a

STATE OF NEW YORK: EXECUTIVE DEPARTMENT
STATE HUMAN RIGHTS APPEAL BOARD

DECISION

BLANCHE MITCHELL, COMPLAINANT-APPELLANT

Case No. C-31999-73

VS.

APPEAL NO. 2072

NATIONAL BROADCASTING COMPANY, DAVID ADAMS,
CHAIRMAN; JULIAN GOODMAN, PRESIDENT; DAVID
GARDAM, VICE PRESIDENT OF EMPLOYEE RELATIONS;
S. THEODORE NYGREEN, MANAGER INFORMATION
SERVICES; VERA MAYER, MANAGER, LIBRARY AND
RECORDS ADMINISTRATION,

RESPONDENTS

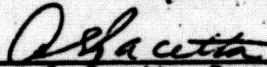
*My was found
on the front sheet* This is an appeal from a Determination and Order after
Investigation by the State Division of Human Rights, dated February 11,
1974, dismissing the complaint which charged the above named respondents
with an unlawful discriminatory practice relating to employment
because of race and color, in violation of the Human Rights Law of
the State of New York. The appellant is black.

The record shows that complainant's employment was terminated by respondents because of unsatisfactory performance of duties. There is no evidence in the record to support the charge of unlawful discrimination because of race and color.

Accordingly, the Determination of the State Division of Human Rights, dismissing the complaint, was not arbitrary or capricious, but a reasonable exercise of discretion, and it is hereby in all respects affirmed.

STATE HUMAN RIGHTS APPEAL BOARD

Dated: July 22, 1974


Albert S. Pacetta, Presiding Member

The following member concurs in the foregoing decision and opinion:

HON. IRMA VIDAL SANTAELLA

Exhibit E²

41a

STATE OF NEW YORK: EXECUTIVE DEPARTMENT
STATE HUMAN RIGHTS APPEAL BOARD

BLANCHE MITCHELL, Complainant-Appellant

vs

DISSENTING OPINION

NATIONAL BROADCASTING COMPANY, DAVID ADAMS,
CHAIRMAN; JULIAN GOODMAN, PRESIDENT; DAVID
GARDAM, VICE PRESIDENT OF EMPLOYEE RELATIONS;
S. THEODORE NYGREEN, MANAGER INFORMATION
SERVICES; VERA MAYER, MANAGER, LIBRARY AND
RECORDS ADMINISTRATION,
Respondents

Case No. C-31999-73

APPEAL NO. 2072

I dissent from the decision herein and vote to remand this matter to the Division of Human Rights for further investigation.

There are several glaring inconsistencies contained in the record which, in my opinion, warrant a re-investigation of this matter. Primarily, the incidents cited by respondents wherein appellant was, at times, 'abusive, bothersome, taunting, argumentative, and uncooperative,' seem, at best, second-hand information. The record contains documents submitted in support of this claim, but by far, the vast majority contain clauses such as, 'he said, she said, as I understand,' and the like. In my opinion, the persons involved, especially appellant's subordinates should have been interviewed since it is claimed a "potential 'mutiny'" had to be averted because of appellant's "behavior" and "attitude".

Likewise, respondents claim that appellant's work performance was minimal. The exhibits submitted by respondents in support of the same were memos to and from respondents Mayer and Nygreen with appellant listed as 'subject'. Appellant asked the field representative herein to review her work, and the record is silent in this respect.

Note from the record that appellant commenced her work for respondents in March 1972, with excellent recommendations from RCA, her former employer. It appears that appellant was hired to eventually replace one Ruth Preston, Supervisor of Records Administrations, who was to retire in two years. In the meantime, appellant was hired as Operations Administrator. As Operations Administrator, appellant was to supervise the Central Records Department. Yet, in August 1972, she became separated from her staff. One must conclude that she could not effectively supervise the overall work performance and/or ability of her staff.

while thus set apart. Subsequently respondents moved appellant back with her staff and gave as "Part of the reason...to move Blanche (the appellant herein) out of the office in Room 736 and back to 2M1W, was the increasing dissatisfaction of the Program Analysts with her behavior." It does not appear that the respondents sought to enable appellant to effectuate the responsibilities of her job, and the Division did not inquire into this matter.

The record reveals that despite appellant's so-called marginally poor work performance, respondents approved a 5.9% merit increase effective March 25, 1973 with the expectation "that the raise would provide Blanche with added incentive to concentrate on learning her job adequately and improving her performance." It should also be noted that as late as April 4, 1973, "Ms. Mitchell was not notably deficient in performing her daily assigned functions." Further, it appears that appellant took charge of the Records Administrations Department some three months after her appointment as Operations Administrator while Ms. Preston went away on her scheduled vacation. There is nothing in the record to reveal that she performed below company standards then or later, until respondent Nygreen became Manager of Information Services.

Respondents also contend that appellant "failed to acquire an understanding of all facets of your department's operation." However, appellant claims that:

"Mrs. Preston devised and instituted all of the complex systems and procedures in Central Records, but they were not reduced to writing. So, there are no written criteria to use in training."

"I am the first person to have been trained for that position, so the criteria for a training period have not been established."

The file contains a job description relating to appellant's previous position as Operations Administrator; however, it is not clear when this description was prepared and if there was a written critique for the job which appellant was hired two years in advance to replace a retiring supervisor. One must agree that appellant's claim seems logical in view of the aforementioned fact.

Exhibit E⁴ 43a

Respondents stated that appellant exercised poor judgment, citing, in particular, her direct request to the Personnel Department of NBC for a salary review. Respondent S. Theodore Nygreen reprimanded appellant for such action. The record contains a memorandum entitled Interdepartment Correspondence, dated December 26, 1973, 'From Daniel Sassi To Joan Simon Subject Blanche Mitchell, which provides:

"1. The Personnel Policy Manual, in Chapter X, 'Salary Administration,' paragraph 5, indicates that 'Supervisors are responsible for informing...Personnel...of any changes in the duties and responsibilities of positions within their department, in order that job descriptions and job evaluations may be maintained on a current basis.' In my view, this means that supervisors have the responsibility for initiating such matters, but does not make them the only initiators." (emphasis mine)

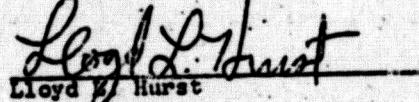
A fair reading of this memorandum suggests that although appellant's action to ask a review of her salary was not in line with the "status quo", it was in keeping with company policy and not violative thereof.

The file contains some notation of an effort to settle this case between the respondents and the appellant; however, it is not clear if all parties were fairly apprised of events. I would recommend that the record be clarified in this regard.

On the basis of the record made herein, I would vote to remand this matter to the Division of Human Rights for further investigation and a final determination therof after based on the record as a whole.

STATE HUMAN RIGHTS APPEAL BOARD

Dated: July 22, 1974


Lloyd D. Hurst

The following member concurs in the foregoing opinion:

HON. EMIL LEVIN

Exhibit E⁵

44a

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : FIRST DEPARTMENT

-----x
Blanche Mitchell. :
Petitioner-Appellant :
-against- : **ANSWER**
The State Division on Human Rights, :
The State Human Rights Appeal Board :
and National Broadcasting Co.: David :
Adams, Chairman, Julian Goodman, Pres.; :
David Gardam, Vice-Pres. of Personnel; :
G.T. Nygreen, Mgr. of Information :
Services & Vera Mayer, Mgr. of Library :
& Records Administration, :
Respondents :
-----x

Respondents National Broadcasting Company, Inc.,
David Adams, Julian Goodman, David Gardam, G.T. Nygreen and
Vera Mayer, for their Answer to the Petition herein allege
as follows:

1. With respect to the allegations of Paragraphs 3 and 4 of the Petition concerning the course of the proceedings before the New York State Division on Human Rights and Human Rights Appeal Board, the answering respondents respectfully refer this Court to the Record of such proceedings filed herein.
2. Deny each and every allegation of Paragraphs 6 and 13 of the Petition.
3. Deny each and every allegation of Paragraphs 7, 8, 9, 10, 11 and 12 which relate to the facts of Petitioner's employment by Respondent National Broadcasting Company except as they may appear in such Record and denies the relevance of any allegations of fact other than those relating to the proceedings had herein.

Affirmative Defense

The Determination and Order of the State Division on Human Rights dismissing Petitioner's complaint on the ground that there is no probable cause to believe that the Respondents have engaged in the unlawful discriminatory practice complained of and the Order of the Human Rights Appeal Board affirming such Determination and Order in all respects are supported by sufficient evidence on the record considered as a whole, are not arbitrary or capricious and are in all respects lawful and proper - all as set forth more fully in the accompanying memorandum of law.

WHEREFORE, the answering Respondents respectfully ask this Court to dismiss the Petition herein with costs.

PROSKAUER ROSE GOETZ & MENDELSOHN
Attorneys for Respondents
National Broadcasting Company,
Inc., David Adams, Julian Goodman,
David Gardam, G.T. Nygreen and
Ira Mayer
Office & P.O. Address
300 Park Avenue
New York, New York 10022

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

J. Marshall Wellborn, being duly sworn, deposes and says: That he is the Assistant Secretary of National Broadcasting Company, Inc. the respondent in the above-entitled action; that he has read the foregoing Answer and knows the contents thereof, and that the same is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

Deponent further says that the reason why this verification is not made by National Broadcasting Company, Inc. and is made by its Assistant Secretary is that National Broadcasting Company, Inc. is a foreign corporation.

J. Marshall Wellborn
J. Marshall Wellborn

Sworn to before me this
10th day of October, 1974

Howard Luehrman
Howard Luehrman
Notary Public

EDGARD LUEHRMAN
NOTARY PUBLIC, State of New York
No. 30-7018150 Qual. in Ulster County
Certificates filed in New York County
Commission Expires March 30, 1976

47a

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on November 7, 1974.

Present—Hon. Owen McGivern,
Emilio Marno,
Theodore R. Konstanian,
Francis T. Murphy, Jr.,
George Tilzer.

Presiding Justice,
Justices.

Blanche Mitchell,
Petitioner

1413
[11-2020]

-against-

The State Division on Human Rights, The State Human Rights Appeal Board and National Broadcasting Co.; David Adams, Chairman, Julian Goodman, Pres.; David Gardam, Vice-Pres. of Personnel, G.T. Nygreen, Mgr. of Information Services & Vera Mayer, Mgr. of Library & Records Administration,
Respondents.

The above-named petitioner having presented a petition to this Court praying for an order, pursuant to Section 293 of the Executive Law, setting aside the determination of the State Human Rights Appeal Board dated July 22, 1974, which affirmed an order of the New York State Division of Human Rights dated February 11, 1974, dismissing petitioner's complaint,

And respondents National Broadcasting Company, Inc., David Adams, Julian Goodman, David Gardam, G. T. Nygreen and Vera Mayer having interposed an answer to said petition,

Now, upon reading and filing the notice of application, dated August 26, 1974, with proof of due service thereof, the petition of

Blanche Mitchell, verified August 26, 1974, and the exhibits annexed thereto, in support of the application; the answer of respondents National Broadcasting Company, Inc., David Adams Julian Goodman, David Cardam, G. T. Nygreen and Vera Mayer, verified October 16, 1974, and the memorandum of Messrs. Proskauer Rose Goetz & Mendelsohn in opposition to the application; and after hearing Mr. Bernard C. Durham for the application, and Messrs. Proskauer Rose Goetz & Mendelsohn opposed; and due deliberation having been had thereon,

It is unanimously ordered that the determination of the State Human Rights Appeal Board be and the same hereby is confirmed, without costs and without disbursements, and the petition dismissed.

ENTER:

Robert W. Gandy

Clerk.

A rectangular redacted stamp, likely a court seal or official stamp, positioned at the bottom left of the page.

49a

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION		PERSON FILING CHARGE
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION NEW YORK DISTRICT OFFICE 90 CHURCH STREET, ROOM 1301 NEW YORK, NEW YORK 10007		Ms. Blanche Mitchell
TO: President NBC 30 Rockefeller Plaza New York, N.Y. 10020		THIS PERSON (Check one)
		<input checked="" type="checkbox"/> CLAIMS TO BE AGGRIEVED
		<input type="checkbox"/> IS FILING ON BEHALF OF A PERSON CLAIMING TO BE AGGRIEVED
		<input type="checkbox"/> IS A COMMISSIONER OF EEOC
		DATE OF ALLEGED VIOLATION on or about 11/19/73
		PLACE OF ALLEGED VIOLATION Central Records
		CHARGE NUMBER TNY 4-0737

Notice of Charge of Employment Discrimination

(See Notice of Non-retaliation on reverse)

You are hereby notified that a charge of employment discrimination under Section 706 of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e-5, as amended, has been filed against you. Information relating to the date, place, and circumstances of the alleged unlawful employment practice or practices is provided herein.

No action on your part is necessary at this time. However, if you wish to submit any information in writing, it will be made a part of the file and will be considered at the time we investigate this charge. Telephone communications cannot be made a part of the record. Section 1602.14 of the Commission's Regulations (See attachment) requires the preservation of all personnel records relevant to this charge, as described below, until it is resolved.

Because of the Commission's volume of pending work, we are unable to tell you when we can schedule investigation of this charge; we will, however, contact you at the earliest possible date.

BASIS OF DISCRIMINATION →		<input checked="" type="checkbox"/> Black	<input type="checkbox"/> RACE OR COLOR	<input type="checkbox"/> SEX	<input type="checkbox"/> RELIGION	<input type="checkbox"/> NATIONAL ORIGIN
NATURE OF CHARGE						
HIRING	<input checked="" type="checkbox"/>	DISCHARGE		LAYOFF		RECALL
WAGES	<input checked="" type="checkbox"/>	PROMOTION		DEMOTION		SENIORITY
JOB CLASSIFICATION		TRAINING/APPRENTICESHIP		EXCLUSION		UNION REPRESENTATION
SEGREGATED LOCALS		REFERRAL		QUALIFICATION/TESTING		ADVERTISING
BENEFITS		SEGREGATED FACILITIES		INTIMIDATION/REPRISAL		REPRISAL (USC 704(e) ONLY)
TERMS AND CONDITIONS		UNSPECIFIED AND OTHER		OTHER (Specify)		
DATE	TYPED NAME OF DISTRICT DIRECTOR			SIGNATURE		
2-27-74	Freddie L. Holt			Freddie L. Holt 2-27		



Blanche Mitchell
EQUAL OPPORTUNITY COMMISSION
NEW YORK DISTRICT OFFICE
90 CHURCH STREET, ROOM 1301
NEW YORK, NEW YORK 10007
264-7161

Charge No. TNY 4-0737

Blanche Mitchell
150 West End Avenue, Apt. 19P
New York, New York 10023

RECEIVED
FEB 18 1974
HERBERT S. SCHLOSSER
Charging Party

National Broadcasting Company
30 Rockefeller Plaza
New York, New York 10020

Respondent

DETERMINATION

Under the authority vested in me by Section 29 CFR 1601.19b(d) of the Commission's Procedural Regulations (September 27, 1972), I issue, on behalf of the Commission, the following Determination as to the merits of the subject charge.

Respondent is an employer within the meaning of Title VII and the timeliness, deferral, and all other jurisdictional requirements have been met. Substantial weight has been accorded to the findings of the New York State Division of Human Rights, which are attached.

Having examined the New York State Division of Human Rights' findings and the record presented, I conclude that there is not reasonable cause to believe that the charge is true.

This determination concludes the Commission's processing of the subject charge. Should the Charging Party wish to pursue this matter further, she may do so by filing a private action in Federal District Court within 90 days of her receipt of this letter and by taking the other procedural steps set out in the enclosed NOTICE OF RIGHT TO SUE.

FOR THE COMMISSION:

Arthur W. Stern
Arthur W. Stern
District Director

Enclosures: (2) 706 Agency Findings
Notice of Right to Sue

51a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Index No. 75 Civ. 5892 (CMM)

BLANCHE MITCHELL,

Plaintiff

NATIONAL BROADCASTING COMPANY,
and S. THEODORE NYGREEN,
MANAGER OF INFORMATION SERVICES,
NATIONAL BROADCASTING COMPANY,

Defendant

**AFFIDAVIT OF SERVICE
BY MAIL**

STATE OF NEW YORK, COUNTY OF NEW YORK

ss.:

The undersigned being duly sworn, deposes and says:

Deponent is not a party to the action, is over 18 years of age and resides at
11 WISTERIA COURT, ORANGEBURG, NEW YORK 10962

That on January 30,
on attorney(s) for
in this action at

COLES and WEINER
PLAINTIFF
1775 BROADWAY

NEW YORK, NEW YORK 10019

the address designated by said attorney(s) for that purpose by depositing a true copy of same enclosed
in a postpaid properly addressed wrapper, in—a post-office—official depository under the exclusive care
and custody of the United States Postal Service within the State of New York.

Sworn to before me
January 30, 1976

1976 deponent served the annexed
NOTICE OF MOTION, STATEMENT OF
MATERIAL FACTS PURSUANT GENERAL
RULE 9 (g) AND AFFIDAVIT and EXHIBITS

Angelo M. Cupaiolo
The name signed must be printed beneath
ANGELO M. CUPAIOL

JEAN LAUREN
NOTARY PUBLIC, State of New York
No. 31-7442080
Qualified in New York County
Commission Expires March 28, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
BLANCHE MITCHELL,

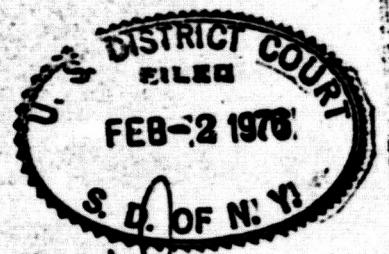
Plaintiff, :

-against- :

NATIONAL BROADCASTING COMPANY, :
and S. THEODORE NYGREEN, :
Manager of Information Services, :
National Broadcasting Company, :

Defendants. :

----- x



75 Civ. 5892 (CMM)

MEMORANDUM IN SUPPORT OF
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT AND DIS-
MISSAL OF THE COMPLAINT

-6-

PROSKAUER ROSE GOETZ & MENDELSOHN
ATTORNEYS
53a 300 PARK AVENUE
NEW YORK, N. Y. 10022

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- -x

BLANCHE MITCHELL, : 75 Civ. 5892 (CMM)
Plaintiff, :
-against- :
NATIONAL BROADCASTING COMPANY, :
and S. THEODORE NYGREEN, :
Manager of Information Services, :
National Broadcasting Company, :
Defendants. :
----- -x

MEMORANDUM IN SUPPORT
OF DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT AND
DISMISSAL OF THE COMPLAINT

Defendants National Broadcasting Company, Inc.
("NBC") and G. Theodore Nygreen submit this memorandum in
support of their motion, pursuant to Rules 12(b)(6) and 56
of the Federal Rules of Civil Procedure, for an order
granting summary judgment and dismissing the complaint.
Plaintiff is, we submit, barred from asserting and seeking
relief for the claims of discrimination in employment,
advanced now under 42 U.S.C. §1981, because such claims have,
as a result of proceedings initiated by plaintiff, already been
adjudicated and dismissed on the merits as frivolous by the New

York State Division of Human Rights, the New York State Human Rights Appeal Board, and, most importantly, by the Appellate Division, First Department, of the Supreme Court of the State of New York.

This motion is based entirely upon official documents filed with or issued by the administrative and judicial bodies referred to above.* Since the facts contained in such documents are indisputable, and since no other facts are relevant to the issues presented on this motion, no trial or further proceedings are necessary, and summary judgment should be entered dismissing the complaint.

The Facts

Plaintiff's Employment at NBC

Plaintiff Blanche Mitchell was employed by NBC on or about March 13, 1972 as an Operations Administrator. The department in which she worked had a staff of 13 employees, 4 of whom were Black.**

* Copies of these documents are annexed to the affidavit of Howard L. Ganz ("Ganz Aff."), submitted in support of defendants' motion.

** Ganz A*f., Exhibit C.

Although it was initially hoped that Ms. Mitchell would become qualified to succeed to a higher position and replace another employee contemplating retirement, Ms. Mitchell's performance failed to meet the standards that had been expected of her.* Ms. Mitchell not only failed to perform effectively, but she was also insubordinate, uncooperative, and hostile, displaying an inability or unwillingness to work with others. Despite counselling and warning, her work deficiencies and poor attitude continued, and, on or about October 17, 1973, Ms. Mitchell was placed on probation for 30 days. During this probationary period, her conduct was at least as, if not more disruptive than previously.** Ms. Mitchell was discharged from employment on or about November 19, 1973.***

The Proceedings Before the New York State Division of Human Rights

On or about December 4, 1973, plaintiff Mitchell filed a complaint with the New York State Division of Human Rights in which defendants NBC and Nygreen (as well as other NBC employees) were named as respondents. In that complaint, Ms. Mitchell charged the respondents named "with an unlawful discriminatory practice relating to employment . . . by denying me equal terms, conditions and privileges of employment and terminating me . . ." because of her race and color.**** Similar to the complaint filed

* Ganz Aff., Exhibit B.

** Ganz Aff., Exhibits B and C.

*** Ganz Aff., Exhibit A. 44.

**** A copy of the State Division complaint is annexed as Exhibit A to the Ganz Aff. *56a*

in this Court, the allegations of the State Division complaint make clear plaintiff's claim that defendant Nygreen was the principal motivating force behind her discharge.*

The State Division is an administrative agency vested by statute with plenary adjudicatory powers similar to those of the National Labor Relations Board, the Federal Trade Commission, and other state and federal agencies. Section 297(2) of the New York Human Rights Law (New York Executive Law, Article 15) provides that upon the filing of a complaint, the State Division shall conduct a prompt investigation and determine whether there is "probable cause" to believe that the respondents have committed an unlawful discriminatory practice. Should it find probable cause, the State Division must direct a public hearing before a hearing examiner. If, after hearing, the respondents are found to have engaged in any discriminatory conduct, the State Division is empowered to order them to cease and desist and to remedy such misconduct by, inter alia, directing the reinstatement of an employee, with or without back pay, and awarding damages. N.Y. Human Rights Law § 297(4) (a) and (c).

If the State Division finds no probable cause to believe that the respondents have engaged in discriminatory

* See Exhibit A, 112-3.

conduct - if it concludes, in effect, as it did with respect to Ms. Mitchell's allegations, that the claims are frivolous - then the Division is empowered to dismiss the complaint.

N.Y. Human Rights Law §297(2).

In the present case, the State Division conducted an investigation during which the parties had the opportunity to submit documentary materials. The investigation also included two conferences before officials of the Division. At these conferences, which were attended by Ms. Mitchell and representatives of NBC (including Mr. Nygreen), the parties were given the opportunity to - and did - give oral testimony and argue their versions of the facts.*

On February 11, 1974, the State Division issued a Determination and Order After Investigation, which, after reciting Ms. Mitchell's claim that she had been denied equal terms, conditions, and privileges of employment, because of her race and color, provided in pertinent part as follows:

"After investigation, the Division of Human Rights has determined that there is no probable cause to believe that the respondents have engaged or are engaging in the unlawful discriminatory practice complained of.

"The respondents submitted documentation that controverted substantively the allegations in the complaint.

* See Ganz Aff., Exhibits B, C, and E, 114(a) and (b).

"The documentation included correspondence which depicted a difficulty of the complainant to adjust to the regimens of the position claimed about.

"The documentation compiled and the oral testimony taken indicate that the complainant was dismissed for reasons other than those complained about." *

In effect, the State Division granted summary judgment dismissing Ms. Mitchell's complaint, thereby disposing of an allegation of discrimination it evidently considered frivolous.

The Proceedings Before the New York State Human Rights Appeal Board

The Determination and Order After Investigation notified Ms. Mitchell of her right to appeal the Division's decision to the New York State Human Rights Appeal Board, ** and, on or about February 12, 1974, Ms. Mitchell filed a notice of such appeal. ***

The Human Rights Appeal Board is an adjudicatory authority within the Executive Department, separate and independent from the State Division. Its members, who are appointed by the Governor with the advice and consent of the New York State Senate, are required to be attorneys. N.Y. Human Rights Law 55297-a(1) and (5).

The Board is charged with the duty of hearing appeals from all orders of the Division, and, in connection

* A copy of the Determination and Order After Investigation is annexed as Exhibit B to the Ganz Aff.

** Ganz Aff., Exhibit B, p. 2. 59a

*** Ganz Aff., Exhibit E, 14(d). 6

therewith, is empowered to require submission of the entire record made before the Division, and to receive briefs and hear oral argument. N.Y. Human Rights Law SS297-a(6)(c), (d), and (e). The Board "may affirm, remand or reverse any order of the division or remand the matter to the division for further proceedings . . .," and its decisions are binding upon the Division except to the extent they may be reversed or modified by the Appellate Division of the Supreme Court, N.Y. Human Rights Law SS297-a(7).

On March 27, 1974, Ms. Mitchell was accorded another opportunity to argue her version of the facts, when the Appeal Board heard oral argument. Following the argument and after its review of the record, the Board, on July 24, 1974, issued an order affirming in all respects the Determination and Order of the State Division.*

The Proceedings Before the Appellate Division,
First Department, of the Supreme Court of
the State of New York

On or about August 26, 1974, attorneys for Ms. Mitchell petitioned the Appellate Division, First Department, pursuant to both Section 298 of the Human Rights Law and Article 78 of the CPLR, for a judgment setting aside the Appeal Board's order and,

* Ganz Aff., Exhibit D.

inter alia, compelling the respondents (who included both NBC and Mr. Nygreen) to reinstate petitioner and award her back pay.*

Under Section 298 of the Human Rights Law, such petition is to be accompanied by a written record of all prior proceedings (furnished by the State Division without cost), and the Appellate Division is empowered to enforce, modify, or set aside in whole or in part the order appealed from, or to remit the case to the State Division for the purpose of adding additional evidence.

The Appellate Division is invested with similar authority in a so-called Article 78 proceeding. CPLR §7806. If, in an Article 78 proceeding before the Appellate Division, "a triable issue of fact is raised," such issue is tried by a referee or by the Supreme Court, with any decision returned to and made an order of the Appellate Division. CPLR §7804(h).

On November 7, 1974, following its receipt of an answer to the petition filed on behalf of NBC and Mr. Nygreen (and others), the Appellate Division, First Department,

* Ganz Aff., Exhibit E.

"unanimously ordered that the determination of the State Human Rights Appeal Board" be confirmed.*

Ms. Mitchell sought no further relief in the courts of New York State.**

ARGUMENT

PLAINTIFF'S ACTION IS BARRED BY THE RES JUDICATA EFFECT OF THE PRIOR AND FINAL DETERMINATION OF HER CLAIM.

Plaintiff, by the complaint herein, seeks to assert a cause of action that, as a result of proceedings plaintiff herself initiated and pursued, already has been adjudicated on the merits and dismissed as frivolous by the administrative and judicial agencies invested by the State of New York with

* Ganz Aff., Exhibit G.

** On February 27, 1974, while the State proceedings were pending, Ms. Mitchell filed a charge of discrimination with the EEOC in which she contended, inter alia, that she had been discharged because she was Black. On February 14, 1975, the EEOC issued a determination that there was no probable cause to believe that discrimination had occurred, and, accordingly, dismissed the complaint.
Ganz Aff., Exhibits H and I.

the authority to adjudicate such matters. Such an attempt at relitigating this claim should be rejected, under the doctrine of res judicata, in order to avoid a wasteful duplication of legal proceedings and the harassment of defendants NBC and Nygreen by the multiple assertion of identical claims.

To protect defendants from the burden and expense of repetitive and unnecessary litigation, courts have long recognized the doctrines of res judicata and collateral estoppel:

"The general principle announced in numerous cases is that a right, question, or fact distinctly put in issue and directly determined by a court of competent jurisdiction, as a ground of recovery, cannot be disputed in a subsequent suit between the same parties or their privies; and even if the second suit is for a different cause of action, the right, question, or fact once so determined must, as between the same parties or their privies, be taken as conclusively established, so long as the judgment in the first suit remains unmodified."
Southern Pacific Railroad Company v. United States, 168 U.S. 1, 48-49 (1897).

These doctrines attach to the final determination of administrative agencies, as well as courts:

"When an administrative agency is acting in a judicial capacity and resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate, the courts have not hesitated to apply res judicata to enforce repose." United States v. Utah Construction and Mining Company, 384 U.S. 394, 422 (1966).

The result, said the Court, "avoids 'a needless duplication of evidentiary hearings and a heavy additional burden in the time and expense required to bring litigation to an end.'" 384 U.S. at 420.

Federal courts, of course, apply the principal of res judicata to the determinations of state adjudicatory bodies. See, e.g., Davis v. Davis, 305 U.S. 32 (1938); Morris v. Jones, 329 U.S. 545 (1947). Res judicata effect is given to a decision of a state court whenever the "primary right and duty, and the delict right or wrong" are the same in the state and federal court actions. Seaboard Coast Line Railroad Company v. Gulf Oil Corporation, 409 F. 2d 879, at 881 (5th Cir., 1969). Thus, it has been held that the fact that state and federal proceedings were based upon different statutory predicates or legal theories did not bar the application of the doctrine of res judicata where the two proceedings involved the same alleged breach of duty. William E. Goetz & Sons v. Board of Regents, State Senior Colleges, 465 F. 2d 432 (5th Cir. 1972), appeal dismissed, 409

U.S. 1121 (1973). Pan American Match, Inc. v. Sears, Roebuck and Co., 454 F.2d 871 (1st Cir. 1972); Fowler Manufacturing Company v. Gorlick, 415 F.2d 1248 (9th Cir. 1969).

In the present case, plaintiff has not only already obtained on-the-merits adjudications by two state administrative agencies, both of which are specialized, expert, and particularly experienced in resolving claims of employment discrimination of the kind advanced. Represented by counsel, she has also secured an on-the-merits consideration of her claim by five Justices of New York's intermediate appellate court.

There can be no dispute that the State Division, the Appeal Board, and the Appellate Division had full adjudicatory power to determine the merits of plaintiff's charge of discrimination. And the exercise of this power to reach a final administrative and judicial determination adverse to plaintiff is, we submit, entitled to full respect in this or any other forum in which plaintiff might attempt to relitigate the same claims.

We recognize, of course, that during the course of the state proceedings there was no full-scale, formal hearing. But it is clear that plaintiff had and exercised the opportunity to adduce evidence on her behalf, to argue her version of the facts, and to have judicial review of the factual findings made against her. This being so, the fact that plaintiff, uninhibited by formal rules of evidence, was unable to persuade the State Division, the Appeal Board, and the Appellate Division that her claim was substantial enough to merit extended consideration.

makes no difference. Res judicata should be invoked just as it would be invoked to bar relitigation of a claim previously adjudicated by a federal court on a motion under Rule 56.

Moreover, it is, as discussed above, the state procedure to order a formal hearing only when there is probable cause to believe that discrimination occurred - when, that is, investigation discloses that the claim of discrimination may have some merit. If the application of res judicata is limited to such cases, and denied in cases where no probable cause is found - where, in effect, the expert state agency concludes that the claim is frivolous - the anomalous result would be to sanction the relitigation of frivolous claims while barring those deemed of at least some merit.

Nor does it make any difference (aside from casting doubt upon her credibility) that plaintiff now advances factual assertions that were not included in her State Division complaint (or, for that matter, in her EEOC charge.) The allegation of factual details supportive of a claim, which were not developed in a prior proceeding, does not give rise to a new claim which may be heard in a subsequent proceeding. Liddell v. Smith, 345 F.2d 491 (7th Cir. 1965): Res judicata bars the relitigation not only of issues actually litigated, but also of issues which the parties had an adequate opportunity to or could have litigated.

See, e.g., Morris v. Jones, supra.

Clearly, since plaintiff's new assertions relate to events allegedly occurring prior to her termination - indeed, as plaintiff now tells it, since such events amounted to the principal reason for such termination - the issues raised thereby could have been and should have been litigated in the state proceedings plaintiff initiated and carried to the Appellate Division. Indeed, if plaintiff's efforts to relitigate receive judicial sanction on the basis of these new assertions, the problems already attendant upon the availability of multiple forums in the employment discrimination area will be geometrically increased to the problems of the multiple use of multiple forums. Litigants, like the plaintiff, will be encouraged to assert new facts in all available forms on a limitless number of occasions, though seeking all the while (as plaintiff here seeks) to redress one and the same allegedly discriminatory discharge.

In this action under 42 U.S.C. §1981, plaintiff seeks relief upon the same claim of discrimination in employment as advanced and adjudicated in the state administrative and judicial proceedings. All of the issues now tendered for this Court's consideration were or could have been litigated in accordance with the state procedures plaintiff voluntarily invoked and pursued to an on-the-merits judicial adjudication. Accordingly, plaintiff should be barred from prosecuting this action by reason of the doctrine of res judicata.

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In advancing this argument, we are aware that the decisions are in conflict with respect to whether, in actions brought under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§2000e et seq., res judicata may or should properly be applied to the determinations of state administrative agencies.

In Tooles v. Kellogg Co., 336 F. Supp. 14, 17 (D. Neb. 1972), the Court stated:

". . . if the state machinery contained the protections for the plaintiff and possible remedies provided by the Federal statute, then a prior State decision should be entitled to a res judicata effect in the Federal action, assuming all the usual requirements for res judicata are met."

Similarly, in Marlowe v. General Motors Corp., 4 FEP Cases 1160, 1161-1162 (E.D. Mich. 1972), the Court found that plaintiff was collaterally estopped from raising issues that could have been litigated before the state civil rights commission.

There are, of course, decisions to the contrary. See, e.g., Batiste v. Furnco Construction Corp., 503 F. 2d 447 (7th Cir. 1974). And there is, in Voutsis v. Union Carbide Co., 452 F. 2d 889, 895 (2d Cir. 1971), cert. denied, 406 U.S. 918 (1972), language which would appear to support this contrary view.

In Voutsis, however, the claimed basis for res judicata was not a final administrative and judicial determination on the merits, as is the case here, but only a voluntary settlement agreement so vague as to have proven unenforceable. The Court of Appeals held that "no settlement has been effectuated" and that therefore plaintiff was not barred on the basis of state proceedings which, notwithstanding lengthy delay, had accomplished no final determination of her claim. 452 F. 2d at 893-894.

Indeed, the Court's statements of its reasons for permitting the District Court to assume jurisdiction despite the prior state proceedings support the position that a prompt and final state determination is and should be dispositive.*

*

"[T]he statutory enforcement scheme contemplates a resort to the federal remedy if the state machinery has proved inadequate.

• • • •

"The system of [federal and state] remedies is a complementary one with the federal remedy designed to be available after the state remedy has been tried without producing speedy results." 452 F. 2d at 893-894.

See the interpretation of Voutsis in Tooles v. Kellogg Co., 336 F. Supp. 14, 17 (D. Neb. 1972).

In Voutsis the state remedy had been tried, but had not produced "speedy results," and the Court merely held that the abortive "settlement" did not preclude the plaintiff from seeking speedier, effective remedies under the federal statute.

In the present case, the state adjudicatory process - both administrative and judicial - has produced a speedy, definitive, on-the-merits result. And there are no reasons why such adjudication should not be given full res judicata effect.

The only statement in Voutsis which might be thought relevant here was that "the doctrines of res judicata and collateral estoppel do not bar appellant as a matter of law." (452 F.2d at 894) The authorities cited in support of this proposition, however, are cases in which the issue in the earlier proceeding was not the same as the issue in the Title VII action. It is clear that the Court did not mean to imply that res judicata could have no application in Title VII cases. Otherwise, a federal judicial decision in any Title VII case would not preclude a plaintiff from bringing additional and identical Title VII actions.

The present action is not, of course, a Title VII case, but rather an action brought solely under 42 U.S.C. §1981;

and our res judicata claim is not based solely upon a state administrative determination, but rather also upon an on-the-merits adjudication by a state court. And we know of no case in which the question whether such a state court adjudication bars a subsequent attempt to litigate under 42 U.S.C. §1981 has been decided.

Whatever the appropriate rule may be in Title VII cases, we believe that different considerations apply in actions under §1981.

One major ingredient of the Title VII statutory scheme - an ingredient with no counterpart in §1981 - is the policy requiring deferral of employment discrimination charges in the first instance to state agencies.

Under Title VII, no charge of discrimination may be filed with the EEOC unless it is first filed with the appropriate state or local agency. See 42 U.S.C. §2000e-5(c). If the charge is filed with the EEOC, the Commission is required, before taking any action, to notify the appropriate state agency and afford it a reasonable time to remedy the practice alleged. See 42 U.S.C. §2000e-5(d). Since no federal lawsuit may be commenced under Title VII unless a charge has been filed with the EEOC, the allegations of Title VII plaintiffs

are always initially subject to state agency consideration-whether or not such plaintiffs affirmatively desire such consideration. And once such state proceedings commence, the Title VII plaintiff has, in practical effect, no choice but to participate and litigate his or her claim.

If, given this Title VII statutory policy of deferral, the decisions of state administrative agencies were accorded res judicata effect, individuals seeking to redress alleged acts of employment discrimination would be forever barred from litigating their claims in federal court.

No such policy of deferral applies under 42 U.S.C. §1981, and no such danger of foreclosure from a federal forum would arise if the res judicata doctrine was applied in this case.

Plaintiff Mitchell was not required, as a precondition to the commencement of this action, to file a complaint of discrimination with the New York State Division of Human Rights. She was not required to prosecute an appeal to the Human Rights Appeal Board. And she was certainly not required to retain counsel and

seek an on-the-merits adjudication of her claim before the Appellate Division.* Having voluntarily initiated and pursued these proceedings to their eventual conclusion, and having had, during the course of those proceedings, a fair and adequate opportunity to litigate all the issues raised here, to argue her version of the facts, and to seek court review of adverse findings, plaintiff should not, we submit, be permitted relitigation in this forum.**

Plaintiff's pursuit of her claim to a final judicial determination in the state proceedings is, we submit, entitled to decisive weight.

In Alexander v. Gardner-Denver Co., 415 U.S. 36 (1974), the Supreme Court, in refusing preclusionary effect to an arbitration award, emphasized the importance of having judges applying "the law of the land," rather than arbitrators applying "the law of the shop," decide the issues (there under Title VII) in dispute. 415 U.S. at 57. Plaintiff here has already had her judicial decision - a unanimous decision of five appellate justices.

* It should be noted that, even prior to the time she sought relief in the New York State courts, Ms. Mitchell (on February 27, 1974) filed a charge with the EEOC, thus setting in motion the procedures necessary for commencement of a Title VII action - a course she evidently decided not to pursue.

** If the Appellate Division had (as plaintiff requested) directed the reinstatement of Ms. Mitchell and an award of back pay or damages, the defendants here would certainly have been bound by such decision and barred from relitigating the issues resolved.

Moreover, Gardner-Denver suggests that even arbitral decisions may be "accorded such weight as the court deems appropriate" (415 U.S. at 60) - ranging even to "great weight" where the arbitrator possessed "special competence" with respect to the issue of discrimination, and "especially" where "the issue is one of fact, specifically addressed by the parties and decided by the arbitrator on the basis of an adequate record." 415 U.S. at 60, n.21. Clearly, the state authorities that addressed themselves to the issues raised by plaintiff's claim possessed the requisite "special competence." And the conclusion that they decided such issues on an adequate record is compelled by the Appellate Division's unanimous affirmance.

In Hollander v. Sears, Roebuck & Co., 392 F.Supp. (D. Conn. 1975), defendant contended that plaintiff's claim of employment discrimination under 42 U.S.C. §1981 was barred on res judicata grounds by prior decisions of the Connecticut Commission on Human Rights and Opportunities and the Court of Common Pleas.

In rejecting defendant's contention, the District Court specifically refrained from deciding "[w]hether employment discrimination proceedings in these state forums can ever bar

relitigation in federal court of a discrimination claim under §1981" 392 F. Supp. at 94.

The basis for the Court's decision was that "the nature of the state proceedings were such that neither res judicata nor collateral estoppel have an application to the instant case." 392 F. Supp. at 95.

In marked contrast to the situation here, the Court found that under the applicable state procedures an investigator had "unilaterally determined" that plaintiff's charges lacked evidentiary support and dismissed them. Moreover, the Court noted, "[n]o hearing was conducted and the plaintiff was not otherwise given an opportunity to argue his version of the facts." 392 F. Supp. at 95 (Emphasis added.) Further, the action taken by the Court of Common Pleas - its sustaining a "plea of abatement" based upon untimely and improper service of the petition upon defendant - was, so the District Court concluded, "not a decision on the merits and thus does not constitute a bar to further litigation." 392 F. Supp. at 95.

Unlike the plaintiff in Hollander, Ms. Mitchell had the opportunity to adduce evidence and argue her version of the facts at each stage of the state proceedings. And

those proceedings culminated in an on-the-merits court determination. Thus, the standards for application of res judicata, as articulated in Hollander, are clearly present in the instant case.

Finally, we call this Court's attention to the suggestion in Hollander (392 F. Supp. at 94-95, n.6) that different factors may be involved when the res judicata issue arises under §1981 rather than under Title VII.

In Lombard v. Board of Education, 502 F.2d 631 (2d Cir. 1974), cert. denied, U.S. (1975), cited in Hollander, the Second Circuit refused to apply res judicata so as to bar plaintiff's claim (under 42 U.S.C. §1983) that he had been denied his Fourteenth Amendment rights to procedural due process when his employment was terminated by the defendant Board of Education.

In Lombard, however, this federal constitutional issue had not been raised in the state proceedings for which preclusionary effect was sought. 502 F.2d at 635. Moreover, and apart from the unique interests involved when there is a claimed deprivation of procedural due process, the Court suggested that application of the res judicata doctrine to foreclose litigation of a due process issue that could have

been, but was not, litigated in the state forum, would force plaintiffs to undertake what would be a futile attack on the administrative process. 502 F.2d at 636.

The Court made clear, however, that where an issue - including a constitutional issue - had actually been raised in the state court, "the litigant has made his choice and may not have two bites at the cherry." 502 F.2d at 636-637.

Plaintiff here, we submit, has clearly had her fair share of "bites," and should be denied the right to litigate again that which has already been fully adjudicated.

CONCLUSION

For the reasons set forth above, we respectfully submit that defendants' motion should be granted in all respects.

Respectfully submitted,

Proskauer Rose Goetz & Mendelsohn
Attorneys for Defendants
300 Park Avenue
New York, New York 10022
Tel. (212) 593-9000

Of Counsel:

Howard L. Ganz
Sara S. Portnoy

C 321-Affidavit of Service of Papers by Mail.
Affirmation of Service by Mail on Reverse Side

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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80 EXCHANGE PL. AT BROADWAY, N.Y.C. 10004

Index No. 75 Civ. 5892 (CMM)

BLANCHE MITCHELL,

NATIONAL BROADCASTING COMPANY,
against
and S. THEODORE NYGREEN,
MANAGER OF INFORMATION SERVICES,
NATIONAL BROADCASTING COMPANY

Plaintiff

Defendant

STATE OF NEW YORK, COUNTY OF NEW YORK

The undersigned being duly sworn, deposes and says:

Deponent is not a party to the action, is over 18 years of age and resides at
11 WISTERIA COURT, ORANGEBURG, NEW YORK 10962

ss.:

That on January 30

19 76

deponent served the annexed MEMORANDUM IN
SUPPORT OF DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT AND DISMISSAL OF THE
COMPLAINT

on COLES and WEINER
attorney(s) for PLAINTIFF
in this action at 1775 BROADWAY
the address designated by said attorney(s) for that purpose by depositing a true copy of same enclosed
in a postpaid properly addressed wrapper, in—a post office—official depository under the exclusive care
and custody of the United States Postal Service within the State of New York.

Sworn to before me

January 30, 1976

Angelo M. Cupaiolo
The name signed must be printed beneath
ANGELO M. CUPAIOL

JEAN LAUREN
NOTARY PUBLIC, State of New York
No. 31-7442080
Qualified in New York County
Commission Expires March 30, 1976

78-A

ORIGINAL

METZNER, J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

BLANCHE MITCHELL,

Plaintiff,

-v-

75 Civ. 5892 (CMM)

NATIONAL BROADCASTING COMPANY, and
S. THEODORE NYGREEN, Manager of
Information Services, National
Broadcasting Company,

Defendants.

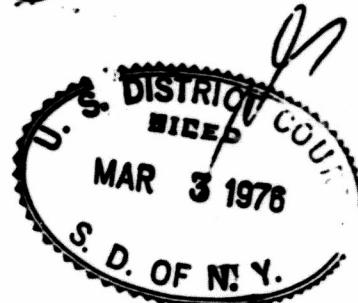
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MEMORANDUM OF LAW IN OPPOSITION
TO DEFENDANTS' MOTION FOR SUMMARY
JUDGMENT AND DISMISSAL OF THE COMPLAINT

COLES and WEINER
Attorneys for Plaintiff
1775 Broadway
New York, N.Y. 10019
(212) 972-1278

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
BLANCHE MITCHELL,

Plaintiff, :

75 Civ. 5892 (CMM)

-v-

NATIONAL BROADCASTING COMPANY, and
S. THEODORE NYGREEN, Manager of
Information Systems, National
Broadcasting Company,

Defendants. :

-----x
MEMORANDUM IN OPPOSITION TO
DEFENDANTS' MOTION TO DISMISS
THE COMPLAINT AND FOR SUMMARY
JUDGMENT

Defendants National Broadcasting Company, Inc., and S. Theodore Nygreen have moved by their attorneys for summary judgment and a dismissal of the complaint.

The gravamen of the motion is two-fold. First is the argument of res judicata and the second is the assertion that there remain, on the face of the affidavit of outside counsel personally unfamiliar with the case, no triable issues of fact.

We deal with them seriatem.

THE DOCTRINE OF RES JUDICATA
IS NOT APPLICABLE TO THIS ACTION

It is axiomatic that a trial de novo on the merits is available to any plaintiff claiming Title VII discrimination and a suit pursuant to the Civil Rights Act of 1964, Title VII may be instituted even though the EEOC fails to find probable cause after a full investigation. McDonnell-Douglas Corporation v. Green, 411 U.S. 792, 93 S. Ct. 1817, 36 L.Ed. 2d 668. The Equal Employment Opportunity Commission does not even consider that the failure to find reasonable cause should insulate an employer from a later federal suit in court, and must issue a right to sue letter when making a determination, even an adverse one. 29 C.F.R. Sec. 1601.30.

The viability of this view is attested to in the case of Voutsis v. Union Carbide Corporation, 452 F.2d 889 (2d Cir., 1971, cert. den., 406 U.S. 918 (1972). It is more than "language which would appear to support this contrary view" as put by counsel for defendants in page 15 of the memorandum in support of the instant motion made to dismiss the complaint and for summary judgment. In Voutsis, moreover, plaintiff had prevailed at the state level, at least in part, and was not satisfied with the relief; and was not precluded from going to federal court to get further relief under Title VII.

The fact that plaintiff here has opted for the broader remedial route of 42 U.S.C. § 1981 (this is NOT a Title VII action) is of no help to defendants. The 1972 amendments to the Civil Rights Act of 1964 make it abundantly clear that she has this dual remedy. See, e.g., the language of the discussions between the proposed amendment of Senator Hruska and the response of Senators Javits and Williams set forth at 118 Cong. Rec. 1459; 118 Cong. Rec. 1458-9, 1521-2; 18 Cong. Rec. 1523-1526; and the sound defeat of the proposed Hruska amendment to prevent the use of 42 U.S.C. § 1981 at 18 Cong. Rec. 1793-1797.

In Jones v. Alfred H. Mayer & Co., 392 U.S. 409 (1968) The Supreme Court held that § 1982 of Title 42 U.S.C. would prohibit private acts of facial discrimination without the necessity of invoking the doctrine of " state action". Without exception, every circuit court including our own, has ruled when ruling specifically on the issue of the availability of 42 USC § 1981, the companion section sued under here, that it is available against private employment discrimination such as we have in the case at bar. See, inter alia, Williamson v. Bethlehem Steel Corp., 468 F.2d 1201,1204(n.2) (2d Cir. 1972); Voutsis, supra.

Defendants correctly point out as a matter of law, at page 19 of their memorandum, that plaintiff was not required, as a condition precedent to this action, to file any discrimination complaint with any agency; yet they now seek to bar her because she did. The deadlocked 2-2 decision of the State Human Rights Appeal Board cannot be construed as a final decision on the merits

of anything. The EEOC made no finding of its own, but ratified the underlying slovenly investigation that did not even turn up the fact that one of the three persons plaintiff was alleged to have supervised was caucasian and not Asian; the determination appeared to have been based upon the agitated demeanor of plaintiff at the conference, not any evidence adduced one way or the other; she herself protested the inability to see what the company was putting in to the record against her; the allegations of hearsay quality as to her lack of ability to get along with her superiors and subordinates were not documented to the Division even after the informal conference. A sorrier record of procedural and administrative due process, including the narrow ground of the proceeding in court when she finally was represented by the Legal Aid Society, making mockery of the concept of "day in court.", would be hard to unearth.

THE ISSUE OF SUMMARY JUDGMENT

It is hornbook law that where triable issues of fact and credibility are raised on affidavit and exhibits, summary judgment will not lie. The affidavit of Ms. Mitchell, taken together with the decision of the Human Rights Appeal Board and the Dissenting Opinion thereof, raise more problems than they solve. This is no place to try the issues of fact presented by them. American Manufacturers Mutual Insurance Co v. American Broadcasting-Paramount Theatres, Inc., 388 F.2d 272 (C.A. 2d 1968).

CONCLUSION

Defendants' counsel submits that Plaintiff has had her fair share of "bites". We are in accord if one considers her the bitee rather than the bitor. If they are referring to the charade of an informal conference and the non-investigation of the EEOC as two of those bites, that's had all the efficacy of gumming a steel ball bearing. Now that the plaintiff has gotten teeth in the form of trial counsel willing and able to litigate the facts and issues surrounding the defendants' cynical treatment of her over the last four years, her next "bite" will be her first. For all the foregoing reasons and the affidavits and exhibits before this Court, the motion should be denied, with costs. Apparently the Defendants, by the volume of the irrelevant exhibits annexed to the unknowledgeable affidavit of counsel, seek a trial by xerox, rather than on the merits. We are willing to indulge this whim, but need some pumice for our "teeth."

Respectfully submitted,

New York, N.Y.
March 3, 1976

COLES and WEINER
Attorneys for Plaintiff
1775 Broadway
New York, N.Y. 10019
(212) 972-1278

by


HAROLD M. WEINER
A Member of the Firm

COLES & WEINER
ATTORNEYS AT LAW
1775 BROADWAY
NEW YORK, N.Y. 10019

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
BLANCHE MITCHELL,

Plaintiff,

-v-

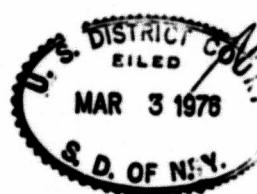
NATIONAL BROADCASTING COMPANY,
and S. THEODORE NYGREEN, Manager
of Information Services, National
Broadcasting Company,

Defendants.

-----X
STATE OF NEW YORK)) ss.:
COUNTY OF NEW YORK))
-----X

75 Civ. 5892(CMM)

AFFIDAVIT IN OPPOSITION
TO DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT



BLANCHE MITCHELL, being duly sworn, deposes and says:

1. I am the plaintiff in the above entitled action. I am making this affidavit at the request of my attorneys, COLES and WEINER, in opposition to the affidavit of the company attorneys, who have no personal familiarity with this case.

2. I respectfully request the Court to take notice that the affidavit offered by the attorneys for defendant is signed by a Partner of the firm of Proskauer, Rose, Goetz and Mendelsohn, Howard L. Ganz, Esq. Mr. Ganz was not present at the investigatory conference held at the State Division of Human Rights, under Mr. H. Alden. To the best of my recollection the attorney present was from the Company; Ms. Joan Simon, or a similar name. No one from the law firm now representing the defendants was present.

4. As indicated by the dissent (DEFENDANTS' EXHIBIT D) the determination of Region 1b of the State Division of Human Rights was left standing by an equally divided, 2-2 decision of the Human Rights Appeal Board. The Member who actually sat and heard my case, and voted to uphold the decision of the Region

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85a

was Albert Pacetta, who to the best of my recollection was indicted and removed from that position shortly thereafter or in the next year, on charges of accepting bribes, if my memory is correct.

5. I was not represented by counsel at either the State Division of Human Rights or the State Human Rights Appeal Board. Perhaps if I had been, this lawsuit would have been unnecessary. But I have yet to have my day in any court. No one in his or her right mind would consider an informal conference at the State Division of Human Rights a court. No witnesses are sworn; no stenographic transcript is taken, just the notes by a field investigator, in that case Mr. Benitez, who never followed up on any of the things I wanted him to investigate; only on what the company told him. Moreover, I was not permitted to see documents the Company showed him to comment thereon.

6. In the face of these difficulties it is not surprising that no evidence appeared on the record to support my charge that I was discriminated against on the basis of race. Instead, the State Division of Human Rights took at face value anything offered, even by way of hearsay, damaging to me, while failing to find merit to a single one of my own allegations.

7. It is significant, and should be noted by this Court that no affidavit of the defendant Nygreen has been put forth in support of this motion. He is familiar with the case, indeed is the cause of it; yet in seeking a judgment on the merits here that there is no reason to try this case because it has been "fully litigated" and there are no triable issue of facts, counsel for the company has deliberately put in only the affidavit of a lawyer unfamiliar personally with any of them, and "evidence" of prior legal victories in the State system which dispose of nothing. The only time I had legal assistance was at the Appellate Division of

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the New York State Supreme Court, when the Legal Aid Society provided me with a lawyer. It was too late to do any good; the time to have had a lawyer was at the first hearing, to prevent or at least establish a record of trying to prevent, the slovenly investigation and malaise of the Region from hiding facts and evidence needed later for court.

8. I respectfully urge this Court in determining this motion to carefully examine the dissenting opinion of the equally divided Appeals Board set forth as DEFENDANTS' EXHIBIT D to the motion for summary judgment. It correctly notes the following:

(a). Incidents alleged to be times when I was "abusive, uncooperative, bothersome, taunting, argumentative", and the like were all hearsay offered from second-hand sources. No one came out at any time and said I was insubordinate to them at the investigatory conference.

(b). Though the defendants claimed at the state investigatory conference, that my work was marginal or minimal, they approved a 5.9% merit increase in March, 1973 and there was nothing in the record to reveal that I performed below company standards until the defendant Nygreen became Manager of Information Services.

(c). There were no written criteria to use in training, Ms. Preston, the white woman whose job I was hired to fill upon her retirement having devised her own complex system which she kept in her head. I was the first person ever hired and trained to take over that position so there were no criteria for any training period established then or prior to that time.

(d). At the time I came to NBC I came with excellent recommendations from my former employer, RCA, which is an NBC subsidiary. At RCA I also worked for a white male man. I got along well with superiors there, and any persons who may be characterized as "subordinates".

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9. Not one of the clerks in the Records Department had filed any complaint against me with the defendant Nygreen or Vera Mayer, the Library Manager, as of the 16th of November 1973 when the 30 days in the unsigned notice of termination had run. This was despite the fact that both Nygreen and Mayer had attempted to get them to complain about me formally in the intervening time from the giving of the notice on October 17, 1973 and the time I left on the 19th of November.

10. Although the determination of the Region states that I supervised an all-minority department of three, this is not true. This was represented erroneously by Ms. Simon in a brief to the State Human Rights Division, based solely on the last names of the parties involved. One woman, Catherine Magliano Lim who is characterized as "Asian" is in fact caucasian and married to an Asian. I showed a picture of her taken by Ruth Preston in the Central Records Office, and also one taken by her husband, which she had given me, to Mr. Pacetta at the Appeal Board Hearing, in rebuttal to the State Division's allegations of a complete investigation, and he commented that "she looks like a nice little Italian girl.". In view of his own identical ethnic origin, his credibility in at least this regard should not be suspect.

11. For all the foregoing, I respectfully urge this Court to deny the defendants' motion for summary judgment and permit this action to proceed to a trial on its substantial merits.

Blanche Mitchell
BLANCHE MITCHELL

Sworn to before me this
3rd day of March 1976

Harold M. Weiner

HAROLD M. WEINER
Notary Public-State of New York
#31-9576985 Qualified in New York County
My Commission Expires 3/31/76

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NEW YORK, N.Y. 10019

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

BLANCHE MITCHELL, :

Plaintiff, :

-v-

75 Civ. 5892(CMM)

NATIONAL BROADCASTING COMPANY, and :
S. THEODORE NYGREEN, Manager of
Information Services, National :
Broadcasting Company, :

AFFIDAVIT IN
OPPOSITION TO
MOTION TO DISMISS OR
FOR SUMMARY JUDGMENT

Defendants. :

-----x
STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

HAROLD M. WEINER, being duly sworn, deposes and says:

1. I am a Member of the Firm of COLES and WEINER, and am making this affidavit in opposition to the motion for summary judgment and dismissal of the complaint in this action made by the attorneys for defendants.
2. As fully indicated by Ms. Blanche Mitchell, the plaintiff here, complainant below, this matter has yet to have a day in what any rational member of the bar could call a "court".
3. The insensitivity, sloth and malaise of the Region of the Division of Human Rights, in permitting the characterization of a caucasian Italian woman who coincidentally happens to be married to an Asian, as evidenced by paragraph 10 of the Mitchell affidavit, is merely a symptom of the disease which infects that agency. A scintilla of real investigation would have found that.
4. It is to be noted, moreover, that the Equal Employment Opportunities Commission did not conduct any investigation of its own in this case, but merely ratified the

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incompetency of the State Human Rights Division. At least the State Human Rights Appeal Board in a 2-2 deadlock, pointed out in the dissenting opinion, some, but not all of the triable issues of fact which remain in this matter.

5. Needless to say, this suit is not amendable to Summary Judgment or a motion to dismiss at this point, as more fully set forth in the accompanying memorandum of law.

6. Of particular significance on this motion is the fact that the defendants have not seen fit to produce an affidavit from one single live human being knowledgeable in this matter, let alone the human defendant, but instead rely on xerography and a multitude of abortive attempts at self - help by the plaintiff to be her own attorney against competent labor counsel.

7. Accordingly, if the motion stands for any proposition it is not summary judgment or dismissal, but a ratification of the axiom that the (person) who is their own attorney has a fool for a client. This is no more eloquently expressed than by the legal sandbagging plaintiff had experienced at the hands of the State agency charged by law as a deferral agency to the EEOC.

8. This could have been corrected by the EEOC had they fully investigated the case. But the Determination of the EEOC (annexed to the moving papers as DEFENDANTS' EXHIBIT I") makes it clear that no investigation was held.

9. It is axiomatic, moreover, that even a favorable determination of the "state" agency is no bar to an ensuing federal action, as more fully set forth in the memorandum of law accompanying these affidavits.

10. For all the foregoing, this motion should be denied with costs to the plaintiff. It is the only piece of "frivolity" presently at large in this case.

Sworn to before me this 3rd
day of March 1976.


HAROLD M. WEINER

COLES & WEINER
ATTORNEYS AT LAW
1770 BROADWAY
NEW YORK, N.Y. 10019

DEBORAH P. FERRATO
Notary Public, State of New York
No. 1577200
Qualified in Greene County
Commissioned April 1, 1974

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x

BLANCHE MITCHELL, :
Plaintiff, :
-against- : 75 Civ. 5892
NATIONAL BROADCASTING COMPANY, : (CMM)
and S. THEODORE NYGREEN, :
Manager of Information Services, : 44804
National Broadcasting Company, :
Defendants. :
----- x

A P P E A R A N C E S

Coles and Weiner
Attorneys for Plaintiff
1775 Broadway
New York, N. Y.
Harold M. Weiner, Of Counsel

[Signature]
FILED
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
JUL 16 1976 PH '76

Proskauer Rose Goetz & Mendelsohn
Attorneys for Defendants
300 Park Avenue
New York, N. Y. 10022
Howard L. Ganz
Sara S. Portnoy
Of Counsel

METZNER, D. J.:

Defendants National Broadcasting Company (NBC) and S. Theodore Nygreen move to dismiss the complaint and for summary judgment based on the theory that plaintiff Blanche Mitchell's employment discrimination claim has already been adjudicated and dismissed on the merits. The action is brought pursuant to 42 U.S.C. § 1981.

The record discloses that plaintiff commenced employment in March 1972 as an Operations Administrator in the Information Services Department of NBC. She was discharged from her position on November 19, 1973, and filed a complaint with the New York State Division of Human Rights on December 3, 1973, claiming that she was discharged because she is black. Thus, the constitutional issue was presented by plaintiff from the inception of her attempt to obtain redress.

On February 11, 1974, the Regional Director of the Division of Human Rights issued an order dismissing the complaint on a finding of no probable cause. This decision was based on both documentary evidence and oral testimony. Plaintiff was informed of her right to appeal to the New York State Human Rights Appeal Board, which appeal she perfected on February 12, 1974. On July 22, 1974, the Appeal Board, by a two-two vote of the panel, affirmed the Division of Human Rights' dismissal, a split

vote requiring affirmance. Two members would have remanded for further investigation.

On August 26, 1974, plaintiff, now represented by counsel, petitioned the Appellate Division, First Department, of the New York Supreme Court for a review of the Appeals Board decision pursuant to both Section 298 of the New York Human Rights Law, N.Y. Exec. Law § 298 (McKinney 1972), and Article 78 of the New York Civil Practice Law and Rules, N.Y.C.P.L.R § 7801, et seq. (McKinney 1963 & Supp. 1975). On November 7, 1974, following a full review of the administrative record, plus oral argument of counsel on the petition, the Appellate Division unanimously confirmed the affirmance by the Appeal Board.

Finally, on November 20, 1975, plaintiff filed this action under 42 U.S.C. § 1981 charging racial discrimination in employment. Thus, this court is presented with the narrow issue, seemingly of first impression, of whether a state administrative and judicial proceeding, instituted pursuant to required state exhaustion under Title VII of the Civil Rights Act (42 U.S.C. § 2000e-5(c), has a res judicata effect barring later action under Section 1981.

This is not a Title VII case and therefore plaintiff's heavy reliance on Voutsis v. Union Carbide Corporation, 452 F.2d 889 (2d Cir. 1971), is misplaced.

Voutsis held that the determination by the state was not res judicata in the subsequent Title VII action. The statute (42 U.S.C. § 2000e-5(c)) requires resort to the state remedy as a prerequisite to maintaining such an action in the federal court. It would be anomalous to argue that the very state proceeding that is required by Title VII bars the contemplated federal remedy under Title VII.

The same reasoning does not apply, however, to 42 U.S.C. § 1981. The Supreme Court has made it perfectly clear that Section 1981 provides a separate and independent federal remedy, differing from Title VII both in the relief available and the method of invocation. Johnson v. Railway Express Agency, Inc., 421 U.S. 454, 459-60 (1975). Accordingly, the question of estoppel by state proceedings must be examined largely without reference to the Title VII procedures.

This is also not the case of Lombard v. Board of Education, 502 F.2d 631 (2d Cir. 1974), cert. denied, 420 U.S. 976 (1975). In Lombard, plaintiff had sued under Article 78 to overturn an arbitrary and capricious state administrative determination. He then brought a federal action under 42 U.S.C. § 1983 for denial of due process in the hearing afforded him. The court held that he had not raised the constitutional issue in the

state court proceeding, and that he was not barred from first raising it in federal court on the basis that it could have been raised in the state proceeding. This holding has since been criticized, Scoggin v. Schrunk, 522 F.2d 436 (9th Cir. 1975); Note, 88 Harv. L. Rev. 453 (1974); cf. McCune v. Frank, 521 F.2d 1152, 1156 n.10 (2d Cir. 1975); but even the Lombard court agreed that if the constitutional issue had been actually raised, plaintiff would have "waived" the right to the federal action. Lombard v. Board of Education, 502 F.2d at 636-37; Thistlethwaite v. City of New York, 497 F.2d 339 (2d Cir.), cert. denied, 419 U.S. 1093 (1974).

The New York Human Rights Law provides protection without limitation against discrimination. This protection is broader than that afforded by the Fourteenth Amendment. Union Free School District No. 6 v. New York State Human Rights Appeal Board, 35 N.Y.2d 371, 320 N.E.2d 859, 362 N.Y.S.2d 139 (1974); State Division of Human Rights v. Kilian Manufacturing Corp., 35 N.Y.2d 201, 318 N.E.2d 770, 360 N.Y.S.2d 603 (1974). Accordingly, plaintiff cannot be heard to argue that a narrower standard was applied by the state proceedings than if her claim had been determined under the Fourteenth Amendment.

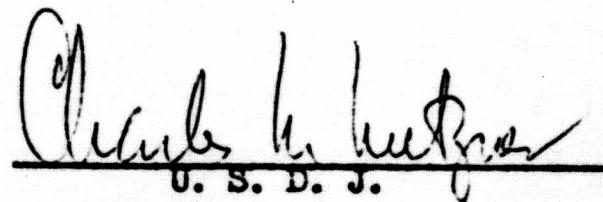
Plaintiff had a full and fair opportunity to present her case and an opportunity to seek court review of any adverse findings. Under such circumstances, the judicial decisions, even of an administrative body, have binding effect. United States v. Utah Construction and Mining Company, 384 U.S. 394, 422 (1966).

It may be argued that the indicated result forces a party to make an election between a Title VII proceeding and an action under Section 1981 in view of the decision in the Johnson case, supra. However, I do not find this to be a deterrent to the result since it is obvious that a person who has commenced proceedings pursuant to Title VII is aware not only of its time limitations. (cf. Johnson, supra), but is aiming for greater relief than afforded by Section 1981. Thus, the broad remedial purposes intended by Congress in this area are not curtailed by the result.

Motion granted.

So ordered.

Dated: New York, N. Y.
July 20, 1976



U. S. D. J.

Metzner, J.



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
BLANCHE MITCHELL

Plaintiff : 75 Civil 5892 (CMM)

-against- :

NATIONAL BROADCASTING COMPANY, : JUDGMENT
and S. THEODORE NYGREEN, :
Manager of Information Services, :
National Broadcasting Company :
: Defendants

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Defendants having moved the Court to dismiss and for
summary judgment, and the said motion having come on to be heard
before the Honorable Charles M. Metzner, United States District
Judge, and the Court thereafter on July 20, 1976, having handed
down its opinion granting the said motion, it is,

ORDERED, ADJUDGED and DECREED: That defendants NATIONAL
BROADCASTING COMPANY and S. THEODORE NYGREEN, Manager of Information
Services, National Broadcasting Company, have judgment against
plaintiff BLANCHE MITCHELL dismissing the complaint.

Dated: New York, N.Y.
July 23, 1976

Raymond F. Burghardt
Clerk

MICROFILM

JUL 25 1976

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORKFee Paid + \$500
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BLANCHE MITCHELL, :
 Plaintiff, :
 -against- :
 NATIONAL BROADCASTING COMPANY, :
 and S. THEODORE NYGREEN, :
 Manager of Information Services, :
 National Broadcasting Company, :
 Defendants. :
 -----x

Index No. 75 Civ 5892 (CMM)

NOTICE OF APPEALJuly 27, 1976
SOUTHERN DISTRICT COURT
New York, N.Y.

SIRS:

PLEASE TAKE NOTICE, that the plaintiff,
 BLANCHE MITCHELL, hereby appeals to the United States Court of
 Appeals for the Second Circuit, from the decision of this Court
 in the above entitled matter duly filed with the Clerk of the
 Court on July 20, 1976, and for each and every part thereof.

Yours, etc.

Dated: New York, N.Y.
July 27, 1976

COLES AND WEINER
 Attorneys for Plaintiff
 1775 Broadway
 New York, New York 10019
 (212) 972-1278

By Ronald R. Coles
 Ronald R. Coles
 A Member of the Firm

To: Clerk of the Court,
 United States District Court
 Southern District of New York
 Foley Square
 New York, New York 10007
 Att: Orders and Appeals Clerk

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 ATTORNEYS AT LAW
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Proskauer, Rose Goetz & Mendelsohn
 Attorneys for Defendants
 Att: Howard L. Ganz, Esq.

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